

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JOSEPH V THORNDIKE
Claimant

APPEAL NO. 16A-UI-06784-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLYMPIC STEEL IOWA INC
Employer

OC: 05/22/16
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 7, 2016, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an agency conclusion that the claimant's voluntary quit was for good cause attributable to the employer. After due notice was issued, a hearing was held on July 6, 2016. Claimant Joseph Thorndike participated. Mike Wagner represented the employer and presented additional testimony through Linda Steffen and Brenda Marple. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit One into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joseph Thorndike was employed by Olympic Steel Iowa, Inc., as a full-time commercial truck driver from June 2014 until May 23, 2016, when he voluntarily quit. Mr. Thorndike's immediate supervisor during the last several months of the employment was Mike Wagner, Transportation Supervisor. The work involved operating a tractor-trailer rig to haul freight from the employer's facility in Bettendorf to customer locations in the Midwest. Most of the trailers that Mr. Thorndike pulled were Conestoga trailers, where the tarps were attached to a metal frame on the trailer and just had to be drawn closed to cover the loaded freight. The employer occasionally also used flatbed trailers. With the flatbed trailers, the driver had to unfold one or more tarps, pull the tarps over the freight, and secure the tarps to the trailer bed with bungee

straps. It took one to two dozen bungee straps to properly secure the freight to the flatbed trailer. The driver would then have to untarp the freight at the delivery site. The tarping process involved substantially more time and effort than opening and closing the coverings on the Conestoga trailers.

Mr. Thorndike and Mr. Wagner had a strained relationship throughout Mr. Wagner's time as Mr. Thorndike's supervisor. Ms. Thorndike believed that Mr. Wagner singled Mr. Thorndike out to work unnecessary overtime hours while other drivers worked fewer hours than they desired. At one point, Mr. Wagner announced that one of the drivers would need to start work as early as 2:00 a.m. for a week to haul particular freight. Mr. Thorndike's usual start time was between 6:00 and 6:30 a.m. Mr. Thorndike balked at the suggestion that he start in the early hours of the morning and cited his family duties and a lack of rest as reasons for not being available to start so early. Mr. Thorndike also thought that Mr. Wagner sometimes had freight loaded on the trailers with an unbalanced and unsafe weight distribution. On one occasion, Mr. Thorndike believed Mr. Wagner wanted him to violate United States Department of Transportation hours of service limits by driving to Humboldt and back in a single shift. The round trip in the truck was a 10-hour drive. When Mr. Thorndike objected, Mr. Wagner assigned the route to another driver. The disagreement about the Humboldt route and other disagreements between Mr. Thorndike and Mr. Wagner were often heated exchanges. During one such disagreement, Mr. Wagner pretended to cry to mock Mr. Thorndike as Mr. Thorndike was raising his concern. Mr. Thorndike had complained to the employer's corporate office and to other staff at the Bettendorf plant about the way Mr. Wagner treated him.

When Mr. Thorndike arrived for work on May 23, 2016, the final day of the employment, he was unhappy to learn that the trailer he was assigned to pull that day was a flatbed trailer. Mr. Thorndike was also unhappy when he located only three bungee straps on the trailer to secure the tarp over the load. Mr. Thorndike was able to locate three additional bungee straps. There were not enough bungee straps available to safely secure the tarp to the trailer so that it would not come off in transit. Mr. Thorndike located Mr. Wagner and told Mr. Wagner there were only three bungee straps on the trailer, that he had found a few more, but that there were no more. Mr. Thorndike asked Mr. Wagner why the trailer was not ready to go. Mr. Wagner said he did not know why the trailer was unready. Mr. Wagner casually acknowledged the need to order bungee straps. Mr. Thorndike was upset that Mr. Wagner did not appear concerned with the lack of bungee straps to properly secure the load. Mr. Thorndike then asked why the freight was not on a Conestoga. Mr. Wagner told Mr. Thorndike that the particular Conestoga was in the shop for preventive maintenance and that the customer had a height limit that ruled out using a different Conestoga. Mr. Thorndike told Mr. Wagner that he was aware that the customer would unload the freight outside on nice days. Ms. Wagner said he had an agreement with the customer and that the particular flatbed trailer needed to be used to accommodate the customer. Mr. Thorndike then told Mr. Wagner that at the time of hire he had been told there would be no flatbed trailers and no tarping. Mr. Wagner replied, "No." Mr. Thorndike then told Mr. Wagner that he would not take a flatbed again. Mr. Wagner told Mr. Thorndike, "You will take a flatbed if needed." Mr. Thorndike then said, "No, next time I have to take a flatbed I'll quit." Mr. Wagner responded, "I will put you on a flatbed everyday if I have to." Mr. Thorndike then said, "Then I will quit and you'll get your wish Mike." Mr. Wagner responded, "Ok." Mr. Thorndike then walked out. As he walked out, Mr. Thorndike said, "Good luck finding drivers." With that Mr. Thorndike quit the employment.

A couple hours after Mr. Thorndike walked off the job, he made his application for unemployment insurance benefits. Workforce Development deemed the application effective May 22, 2016, the Sunday that started the week during which the application was made. Mr. Thorndike has received \$3,129.00 in benefits for the seven-week period ending July 9,

2016. Olympic Steel is Mr. Thorndike's sole base period employer. On June 6, 2016, a Workforce Development claims deputy held a fact-finding interview to address Mr. Thorndike's separation from the employment. Equifax represented Olympic Steel, but nothing to add beyond Mr. Wagner's written statement, dated May 25, 2016 and cursory narrative that was included in the protest materials. No one from Olympic Steel got on the phone for the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Iowa Admin. Code r. 871-24.25(21) and (22) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

Where a claimant left employment due to unsafe working conditions, the quit is deemed to be for good cause attributable to the employer. 871 IAC 24.26(2).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

At first glance, Mr. Thorndike's quit appears to have been based on a personality difference with Mr. Wagner. However, the weight of the evidence indicates there was more to the situation

between Mr. Wagner and Mr. Thorndike than mere personality difference. On at least one occasion, Mr. Wagner explicitly mocked and demeaned Mr. Thorndike, indicating that Mr. Thorndike was a “cry baby” for raising legitimate concerns. Mr. Thorndike had other legitimate concerns that Mr. Wagner elected to respond to in an unnecessarily heavy-handed manner. On multiple occasions, Mr. Thorndike believed Mr. Wagner had put Mr. Thorndike in the position of having to transport a load in an unsafe manner. The weight of the evidence indicates that Mr. Thorndike raised those concerns to Mr. Wagner, to other staff at the Bettendorf facility, and to the employer’s corporate office. The final incident that triggered Mr. Thorndike’s quit was part of the pattern. The final incident involved Mr. Thorndike being assigned a load that would require substantial additional work for Mr. Thorndike as a result of Mr. Wagner’s decision to have the Conestoga trailer that would otherwise have been used for the load taken out of operation for routine preventive maintenance. The final incident involved Mr. Thorndike raising a legitimate concern about not having sufficient bungee straps to safely secure tarps to the load and the trailer. That concern included a concern that the tarp could come off in transit and become a road hazard. The final incident also involved Mr. Wagner responding in an unnecessarily heavy-handed manner by threatening to assign Mr. Thorndike to use a flatbed trailer every day if Mr. Wagner deemed it necessary. The whole picture is sufficient to establish a quit in response to intolerable and detrimental working conditions and unsafe working conditions.

Mr. Thorndike voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Thorndike is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits.

DECISION:

The June 7, 2016, reference 01, decision is affirmed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs