IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RAYMOND L COX
Claimant

EAGLE EXPRESS LINES
Employer

APPEAL NO. 11A-UI-05991-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/06/10
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 27, 2011, reference 02, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on June 20, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. John Cobb participated in the hearing on behalf of the employer with a witness, Carl Caudell. Claimant Exhibits 1, 2, 3, 4, 5, 5A, 6, 7, 8.2A, 8.2B, 8.2D (2 pages), 8.3, 8.3A, 8.3B, 8.3C, 8.3D, 9, 9.1, 10, 12, 13 were sent to Cobb for objections after the hearing. Cobb objected on grounds of relevance to 1, 2, 3, 4, 5, 5A, 6, 7, 8.2A, 8.2B, 8.2D (2 pages), 8.3, 8.3A, 8.3B, 8.3C, 8.3D, 9, 9.1, 10, and 13. My ruling is that 1, 2, 3, 4, 5, 5A, 6, 7, 8.2A, 8.2B, 8.2D (2 pages), 8.3, 8.3A, 8.3B, 8.3C, 8.3D, 9, 9.1, 10, 12 are relevant and admitted into evidence, but 13 is not relevant to this case.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked for the employer an over-the-road truck driver from September 4, 2010, to April 3, 2011. Under federal department of transportation rules, drivers are not permitted to drive over 11 hours or to drive after being on duty for 14 hours.

The claimant quit employment on April 3, 2011, because he repeatedly was requested by dispatchers to drive in violation of federal hours of service rules. For example, the claimant came on-duty at 9:30 p.m. on March 16, and picked up a load from Des Moines, Iowa. He drove that night to Chicago and then to the employer's main terminal to pick up a trailer to take to another location to load. The trailer was rejected so the claimant had to wait around for instructions. At 9:30 a.m. on March 17, the claimant was told go to Bolingbrook, Illinois, to pick up a load to take to Indianapolis, Indiana. The claimant got to the yard in Bolingbrook at about 10:15 a.m. The load was not ready yet and the trip to Indianapolis was over three hours. The claimant told the dispatcher he could not legally make the trip to Indianapolis because he had been on duty for about 13 hours at that time and needed to take a 10-hour rest break. The dispatcher told him that the load needed to be delivered to Indianapolis that day . The claimant

was not able to leave until about 1:00 p.m., which involved driving after being on duty for over 14 hours in violation of the hours of service rules.

After delivering the load, the claimant did not begin his 10-hour rest period until about 5:00 p.m. He was not allowed a 10-hour rest period, but instead was called by the dispatch to pick up a load and start driving again at 10:00 pm on March 17. The claimant had complained repeatedly to his primary dispatcher about being asked to take loads that would cause him to violate the hours of service rules, but was told if he was not willing to take the loads dispatched he would be terminated.

As a result of the repeated problems with the hours of service violations even after he complained, the claimant quit his employment on April 3, 2011. He did not tell the employer when he quit what his reasons for quitting were.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1. The rules provide that a claimant who leaves employment due to intolerable or detrimental working conditions has established good cause to quit attributable to the employer. 871 IAC 24.26(4)

Before the Supreme Court decision in Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005), this case would have been governed my understanding of the precedent established in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The Cobb case established two conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions or a substantial change in the contract of hire. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that he intends to quit if the condition is not corrected. If this reasoning were applied in this case, the claimant would be ineligible because he failed to notify the employer of his intent to quit if the working conditions were not corrected.

In Hy-Vee Inc., however, the Iowa Supreme Court ruled that the conditions established in Cobb do not apply when a claimant quits due to intolerable or detrimental working conditions by reasoning that the Cobb case involved “a work-related *health* quit.” Hy-Vee Inc., 710 N.W.2d at 5. This is despite the Cobb court’s own characterization of the legal issue in Cobb. "At issue in the present case are Iowa Administrative Code Sections 345-4.26(1) (change in contract for hire) and (4) (where claimant left due to intolerable or detrimental working conditions)." Cobb, 506 N.W.2d at 448.

In any event, the court in Hy-Vee Inc. expressly ruled, “notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions.” Hy-Vee Inc., 710 N.W.2d at 5. The court also overruled the holding of Swanson v. Employment Appeal Board, 554 N.W.2d 294, 297 (Iowa Ct. App. 1996), that a claimant who quits due to unsafe working conditions must provide notice of intent to quit. Hy-Vee Inc., 710 N.W.2d at 6.

The court in Hy-Vee Inc. states *what is not required* when a claimant leaves work due to intolerable working conditions but provides no guidance as to *what is required*. The issue then is whether claimants when faced with working conditions that they consider intolerable are required to say or do anything before it can be said that they voluntarily quit employment with “good cause attributable to the employer,” which is the statutory standard. Logically, a claimant should be required to take the reasonable step of notifying the employer about the unacceptable condition or change. The employer’s failure to take effective action to remedy the situation then

makes the good cause for quitting "attributable to the employer." In addition, the claimant should be given the ability to show that management was independently aware of a condition that is objectively intolerable or was a willful breach of the contract of hire to establish good cause attributable to the employer for quitting.

Applying these standards, the claimant has demonstrated good cause attributable to the employer for leaving employment. The clamant quit due to being required to take loads in violation of federal hours of service rules. He complained to the dispatcher about this, but nothing was done and the problems reoccurred. Good cause for quitting attributable to the employer have been shown in this case.

DECISION:

The unemployment insurance decision dated April 27, 2011, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/css