

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAVON I BAKER
Claimant

DECKER TRUCK LINE INC
Employer

APPEAL 19R-UI-09064-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/30/19
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Admin. Code r. 871-23.19 – Employees and Independent Contractors

STATEMENT OF THE CASE:

Javon Baker (claimant) appealed a representative's September 9, 2019, decision (reference 06) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Decker Truck Line (employer). This administrative law judge issued a decision on October 11, 2019, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on November 15, 2019. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 16, 2019. The claimant participated personally. The employer participated by Courtney Bachel, Director of Human Resources. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 7, 2018, as a full-time driver. The employer determined the claimant's route and provided his truck. It considered the claimant an employee. The claimant thought his truck was in the shop too much. He wanted to work closer to his family and take a job nearer to home. He also wanted a truck without service issues.

In November 2018, he spoke with his dispatcher and a facilities female about leaving the employer and getting a job with Romell's Transportation. He was hoping they could help him find a job there. The claimant mentioned the idea to the dispatcher and the facilities female again later. The employer was training the claimant for Amazon work. While the claimant's truck was being serviced, the employer continued to have work available for the claimant as a trainer of other drivers. In early January 2019, the claimant told the dispatcher that if he did not get his own truck back, he was leaving.

In February 14, 2019, the supervisor at the Hammond, Indiana, terminal told the claimant that if he wanted to leave and look for another job, he should clean out his truck and place his keys inside. Without notice on February 26, 2019, the claimant called the employer and said he was leaving. The claimant's main reasons for leaving were that he thought his truck was in the shop too often and he wanted to be an independent trucker. In early March 2019, the claimant was offered a job as an independent contractor at Romell's Transportation. The claimant started working at Romell's Transportation as an independent contractor. Continued work was available had the claimant not resigned.

The claimant filed for unemployment insurance benefits with an effective date of June 30, 2019. He only has wages from the employer in his base period of employment. The claimant appealed a representative's decision dated September 17, 2019, reference 04, that stated the claimant was an independent contractor working on a self-employed basis with Romell's Transportation. On November 5, 2019, Administrative Law Judge Beckman approved the representative's decision. That decision has become final.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Admin. Code r. 871-23.19 provides:

Employer-employee and independent contractor relationship.

(1) The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools, equipment, material and a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee under the usual common law rules. Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, occupation, business or profession, in which they offer services to the public, are independent contractors and not employees. Professional employees who perform services for another individual or legal entity are covered employees.

(2) The nature of the contract undertaken by one for the performance of a certain type, kind, or piece of work at a fixed price is a factor to be considered in determining the status of an independent contractor. In general, employees perform the work

continuously and primarily their labor is purchased, whereas the independent contractor undertakes the performance of a specific job. Independent contractors follow a distinct trade, occupation, business, or profession in which they offer their services to the public to be performed without the control of those seeking the benefit of their training or experience.

(3) Independent contractors can make a profit or loss. They are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed. Independent contractors often have significant investment in real or personal property that they use in performing services for someone else.

(4) Employees are usually paid a fixed wage computed on a weekly or hourly basis while an independent contractor is usually paid one sum for the entire work, whether it be paid in the form of a lump sum or installments. The employer-employee relationship may exist regardless of the form, measurement, designation or manner of remuneration.

(5) The right to employ assistants with the exclusive right to supervise their activity and completely delegate the work is an indication of an independent contractor relationship.

(6) Services performed by an individual for remuneration are presumed to be employment unless and until it is shown to the satisfaction of the department that the individual is in fact an independent contractor. Whether the relationship of employer and employee exists under the usual common law rules will be determined upon an examination of the particular facts of each case.

(7) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like

(8) All classes or grades of employees are included within the relationship of employer and employee. For example, superintendents, managers and other supervisory personnel are employees.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.
- 2.

Iowa Admin. Code r. 871-24.25(19) 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:

(19) The claimant left to enter self-employment.

The Iowa Employment Security Law only deals with employment relationships. In this case, the evidence shows that the claimant was an employee of the employer. The employer directed his work and work space.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. When an employee quits work because he becomes self-employed, his leaving is without good cause attributable to the employer. The claimant left work to become an independent contractor. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's September 9, 2019, decision (reference 06) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn