

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LLOYD D UITERMARKT
Claimant

MAXIM TRUCKING INC
Employer

APPEAL 19A-UI-09171-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/17/19
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On November 22, 2019, Lloyd D. Uitermarkt (claimant) filed an appeal from the November 14, 2019, reference 01, unemployment insurance decision that allowed benefits from October 27 to November 9, 2019 and denied benefits effective November 10, 2019 based upon the determination he voluntarily quit employment with Maxim Trucking, Inc. (employer) effective November 8, 2019 without good cause attributable to the employer, but as a result of his resignation he was discharged on October 28, 2019. The parties were properly notified about the hearing. A telephone hearing was held on December 16, 2019. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. No exhibits were admitted into the record.

ISSUE:

Did the claimant voluntarily quit employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an Equipment Operator beginning in May 2017, and was separated from employment on October 28, 2019. The claimant was originally hired to work five ten-hour days on the crusher crew. The claimant knew he would be commuting from Pella, where he lives, to Des Moines, where the employer's worksite was located. The claimant also knew his hours would vary based on the amount of work and weather.

In March 2018, the claimant was reassigned to a work crew which had more variable and longer hours. He would work five 12-hour days and eight hours on Saturday. The claimant noticed in approximately April 2019 that some of the crew members would leave the jobsite for about an hour and return working at a quicker pace. The claimant assumed they were using drugs and told the foreman who just laughed. The claimant did not follow-up with anyone else in the company. The claimant also only received one raise during his tenure and was making less than other employees in his crew.

Toward the end of his employment, the claimant was working in Des Moines scheduled to start at 6:00 a.m. This meant he had to wake up at 4:00 a.m. to get ready and commute to the job site. On Sunday, October 27, the claimant learned that the start time was being moved to 5:00 a.m. The claimant submitted a two-week notice of resignation and his last day of work was to be November 11. On Monday, October 28, the claimant was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied effective November 10, 2019.

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.

Iowa Admin. Code r. 871-24.25 provides, in relevant part:

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:

....

- (13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

...

- (18) The claimant left because of a dislike of the shift worked.

...

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

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

...

- (27) The claimant left rather than perform the assigned work as instructed.

...

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

...

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Iowa Admin. Code r. 871-24.26 provides, in relevant part:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

(2) The claimant left due to unsafe working conditions.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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). Where a claimant gives numerous reasons for leaving employment Iowa Workforce is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

The claimant has not met the burden of proof to establish that he left employment with good cause attributable to the employer. The claimant has raised multiple issues that led to the end of his employment including alleged drug use on the job site, a change in the contract of hire, the commuting distance to work, the work hours, and dissatisfaction with his wages.

The two reasons provided by the claimant that could be considered good cause attributable to the employer are the alleged drug use on the job site and a change in the contract of hire. The claimant has not established that there was drug use on the jobsite or that it resulted in the decision to leave his employment. The claimant's observations could be explained by other non-drug related factors. The claimant was also aware of the issue for months before leaving

and did not report it to anyone in management beyond his foreman, leading to the conclusion he did not actually feel the work environment was unsafe.

The claimant's second argument was that there was a change in the contract of hire. An employer has the right to allocate personnel in accordance with the needs and available resources. In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988).

The claimant acquiesced to the change that occurred in March 2018 as he continued working with the longer and more varied hours for over a year. The only change that occurred immediately before the claimant decided to leave his employment was working one hour earlier. This does not constitute a substantial change in the contract of hire, especially when he works in an industry with varying hours depending on when work is available and able to be performed.

The claimant's decision to leave due to the hours he had to work, the commuting distance to and from work, and dissatisfaction with his pay are not good cause reasons attributable to the employer. The claimant did give his two-weeks' notice and was discharged the next business day as a result. He is entitled to benefits from October 27 through November 9, 2019. However, benefits are denied effective November 10, 2019.

DECISION:

The November 14, 2019, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Stephanie R. Callahan
Administrative Law Judge

December 20, 2019
Decision Dated and Mailed

src/scn