

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

C C HILDRETH
Claimant

APPEAL NO. 11A-UI-06290-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONTRACT TRANSPORT INC
Employer

OC: 04/03/11
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

C.C. Hildreth (claimant) appealed a representative's May 3, 2011 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Contract Transport (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 6, 2011. The claimant participated personally. The employer participated by Jeane Nible, corporate treasurer, and Allen Bergman, human resources director.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer and whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on February 26, 2010, as a full-time driver. At the time he was hired, the employer promised the claimant he would average at least 40 hours per week. The claimant thought he was working fewer hours but did average 62 hours per week over the length of his employment. On September 29, 2010, the claimant quit work to become self-employed. The claimant did not realize he would be a sub contractor at the time he quit work with the employer. Continued work was available had the claimant not resigned. The claimant worked as a sub contractor until April 6, 2011.

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 Code section 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.

871 IAC 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.

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 self-employed. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

871 IAC 24.23(7) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(7) Where an individual devotes time and effort to becoming self-employed.

When an employee is devoting time and effort to being self-employed, he is considered to be unavailable for work. The claimant was devoting his time and efforts to his work as a sub contractor. He is considered to be unavailable for work from September 30, 2010, through April 6, 2011. The claimant is disqualified from receiving unemployment insurance benefits from September 30, 2010, to April 6, 2011, due to his unavailability for work.

DECISION:

The representative's May 3, 2011 decision (reference 01) 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. In addition, the claimant is disqualified from receiving unemployment insurance benefits from September 30, 2010, to April 6, 2011, due to his unavailability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw