

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STANLEY W ZESCH
Claimant

APPEAL NO. 09A-UI-10027-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUBEL TRUCKING LLC
RUBEL TRUCKING
Employer

OC: 11/30/08
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Stanley Zesch filed a timely appeal from the July 9, 2009, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on July 29, 2009. Mr. Zesch participated. John Rubel, Owner, represented the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Stanley Zesch was employed by Rubel Trucking during two separate periods. The first period of employment began in July 2007 and lasted for about a year. The most recent period of employment began in February 2009 and ended on May 30, 2009, when Mr. Zesch voluntarily quit. Mr. Zesch was employed as a full-time truck driver. The type of loads the employer had available for Mr. Zesch depended on the growing season. In the spring, the employer hauled seed for Monsanto. When Mr. Zesch performed that work, he hauled throughout Iowa and the surrounding states. When Mr. Zesch hauled loads for Monsanto, his average gross weekly pay was around \$700.00. The Monsanto loads went away in May, during the planting season. As the Monsanto loads reduced in number and then disappeared, the employer shifted to hauling construction materials. The employer supplemented the construction materials loads by hauling "local" loads for farmer coops and growers including Mr. Rubel. The employer continued to provide full-time employment, but the pay was not the same. The construction loads paid \$12.00 per hour. The local seed loads paid \$10.00 per hour. Mr. Zesch's gross pay went to \$300.00 - \$500.00.

The seasonal aspect of the employment was the same during both periods of employment. When Mr. Zesch started the most recent period of employment in February 2009, he knew that the Monsanto loads would disappear at some point in the planting season and that the employer would then switch to hauling construction materials and seed for local growers.

Mr. Zesch voluntarily quit the employment a month to a month and a half after the Monsanto loads ended and the compensation changed. Mr. Zesch was having difficulty keeping up with his bills. Payday was Monday and Mr. Zesch ran out of money before Monday. Mr. Zesch did not notify the employer he was quitting. Instead, on or about May 30, Mr. Zesch appeared at the workplace, left his timecard and employer-issued credit card, and left the workplace without speaking to Mr. Rubel. A week later, Mr. Zesch contacted Mr. Rubel for the sole purpose of inquiring about his final paycheck. The employer continued to have work available for Mr. Zesch.

Throughout the employment, Mr. Zesch had resided in Marshalltown. Mr. Zesch would commute approximately 150 miles to Laurens at the beginning of the workweek and stay in the employer's truck until the end of the workweek.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

871 IAC 24.26(1) provides:

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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The weight of the evidence fails to establish a significant change in the conditions of the employment that would make Mr. Zesch's quit for good cause attributable to the employer. The evidence indicates that Mr. Zesch knew the seasonal nature of the work at the time he elected to return to the employer in February 2009. The evidence indicates that Mr. Zesch was aware at the start of the employment that nature of the available loads would change during the planting season and that the income would not be as good. The weight of the evidence indicates that the employer continued to provide full-time employment to Mr. Zesch, but that Mr. Zesch decided not to continue with the employment. The evidence indicates that even if the change in loads was a significant change in the employment, Mr. Zesch acquiesced in the changed conditions by continuing with the employment at least a month after the change.

Mr. Zesch voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Zesch is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Zesch.

DECISION:

The Agency representative's July 9, 2009, reference 03, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css