

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD A FREES
Claimant

APPEAL NO. 08A-UI-01759-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTUALLY CLEAN
Employer

OC: 01/27/08 R: 03
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Actually Clean (employer) appealed a representative's February 18, 2008 decision (reference 01) that concluded Edward Frees (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 6, 2008. The claimant participated personally and through his father Edward Frees, Sr. The employer participated by Jason Bailey, General Manager, and Colleen O'Hare, Manager of Windsor on the River, employer's customer. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

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 in April 2007, as a full-time maintenance person. The claimant was paid \$15.00 per hour for 40 hours per week and \$22.50 per hour for overtime.

The claimant was careless and caused damage to the employer's property. In November 2007, the claimant put regular gasoline instead of diesel in one of the employer's trucks. It caused \$950.00 worth of damage to the truck. The employer talked to the claimant about paying for part of the damage. The employer decided to charge the claimant \$350.00. The claimant did not agree to the charge. Later the claimant caused damage to a brand new truck because he did not know how to attach the trailer to the hitch. The claimant knew the employer would take more money out of his check to repair the new truck.

The claimant reviewed his paychecks and noticed the employer did not pay him overtime hours in November and December 2007. The claimant walked off the job on January 4, 2008, because the employer took money from his paycheck without his permission to pay for the first truck and the employer did not pay him overtime pay when it was due.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes he did not.

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.

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.

In the absence of agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving the employment. Deshler Broom Factory v. Kinney, 140 Nebraska 889, 2 N.W.2d 332 (1942). When an employee quits work because the employer did not pay wages when they were due without an agreement to the contrary, his leaving is with good cause attributable to the employer. The claimant left work because he was not paid for wages when they were due and there was no agreement to the contrary. While it is true the employer told the claimant he would be withholding money from his check, the claimant did not agree to the withholding. In addition, the claimant did not agree to not receiving overtime pay. His leaving was with good cause attributable to the employer. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 18, 2008 decision (reference 01) is affirmed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css