

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WARREN L DAY
Claimant

APPEAL NO. 07A-UI-00254-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN TRANSPORT CORP
Employer

**OC: 12/03/06 R: 04
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpaid

STATEMENT OF THE CASE:

The employer, Ruan Transport Corporation (Ruan), filed an appeal from a decision dated December 28, 2006, reference 01. The decision allowed benefits to the claimant, Warren Day. After due notice was issued a hearing was held by telephone conference call on January 24, 2007. The claimant participated on his own behalf. The employer participated by Terminal Manger Daniel Oney.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Warren Day was employed by Ruan from October 9 until December 4, 2006. He was a full-time local truck driver. At the time he was hired the claimant was notified he would receive 24 percent of the revenue of any load he delivered plus pre- and post-trip pay for fueling and other related matters. He would also receive \$15.00 per hour if there was more than a 90-minute delay in loading at the customers' location.

The claimant realized the pay would activate only after 90 minutes in mid-November 2006 and, although he was not happy about it, elected to remain employed. On December 4, 2006, he collected his pay stub and realized the rate being charged to one of his major customers had been reduced on a seasonal basis. This was the hauling of concrete between the customer's facility in Chicago and Davenport. The claimant took his first load and then called Terminal Manager Daniel Oney on the phone to say he was quitting.

Warren Day has received unemployment benefits since filing a claim with an effective date of December 3, 2006.

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.

871 IAC 24.25(13) 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:

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

The claimant maintained he quit because of a reduction in pay but the record does not support this contention. He was paid 24 percent of the revenue of the load and that is what he was paid. A minimum dollar amount was never guaranteed, only the percentage. There was no change in the contract of hire and there the claimant did not have good cause attributable to the employer for quitting.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of December 28, 2006, reference 01, is reversed. Warren Day is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,453.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs