

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE L STEPHENS
Claimant

APPEAL NO. 14A-UI-00112-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LARRY L HAVERLY
Employer

OC: 12/08/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated December 27, 2013, reference 01, which denied unemployment insurance benefits finding that the claimant voluntarily quit work without good cause attributable to the employer. After due notice was provided, a telephone hearing was held on January 28, 2014. Claimant participated. Participating on behalf of the claimant was his attorney, Mr. William Habhab. The employer participated by Mr. Larry Haverly, Owner.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Dale Stephens began employment with Larry Haverly trucking in July 2009. Mr. Stephens was employed as a full-time truck driver and was paid by commission. His immediate supervisor was the company owner, Larry Haverly.

Mr. Stephens' last day on the job was November 29, 2013. Claimant was off work due to illness until he reported to the employer's facility on Saturday, December 7, 2013. At that time Mr. Stephens turned in his key and fuel card and indicated that he was "quitting" his employment. Mr. Haverly cited illness and general dissatisfaction as his reasons for quitting. Another driver who had provided Mr. Stephens a ride back to his home reported that Mr. Stephens stated that he was going to work for a different trucking company.

In his position as a driver for Larry Haverly trucking, Mr. Stephens had established a preference for hauling bean meal to an AGP location, an approximate 100-mile trip.

In general it appears that Mr. Stephens would often have two loads of bean meal available to him most working days to transport to the AGP location and would have sufficient driving hours available to him under DOT rules to transport the loads, as well as to load and unload each

delivery. At times, when Mr. Stephens had indicated that he did not have sufficient driving hours to take a second load or to complete a load, the employer made arrangements to provide another driver or delay the delivery of the load until the next working day.

Mr. Stephens did not submit his DOT logs to the employer for review but instead reported only the number of hours worked each week and the number of loads completed for payment.

Mr. Stephens had at times made generalized statements about working a long day but had not complained to the employer that he believed that he was being required to drive an excess of hours permitted under DOT rules.

The employer reasonably believed that the claimant had sufficient driving hours each working day to deliver loads that he had accepted. The employer also believed that the "long days" described by Mr. Stephens had often been caused, in part, due to beginning his work at 3:00 or 4:00 a.m., when leaving at 5:00 or 5:30 a.m. would allow more than sufficient time to haul the first load of the day as AGP is only 100 miles away and opened at 8:00 a.m. The day-to-day operation of the truck and the number of hours driven each day was left to Mr. Stephens' discretion.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant left employment with good cause attributable to the employer. It does 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.

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if the conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). Claimants are not required to give notice of an intention to quit due to intolerable, detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee, Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005). The test as to whether working conditions are intolerable or detrimental is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Services, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

In the case at hand, the evidence does not establish that Mr. Stephens provided reasonable, advanced notice to his employer of his intention to quit preventing the employer from addressing or resolving Mr. Stephens' complaints. The employer was reasonable in its belief that Mr. Stephens was operating the truck within DOT regulations because the claimant had sufficient time on most work days to haul two loads to the AGP facility taking into consideration distance, the driving time and the time necessary to load and unload the truck. When the

claimant had stated that he did not have sufficient time, the employer had acted to delay the load or to have a replacement driver/truck continue the load in Mr. Stephens' place. The claimant did not supply the employer with DOT logs or provide reasonable notice of any specific job dissatisfaction for quitting his employment without notice on December 7, 2013. Although the claimant was asked at the time of quitting why he was leaving the employment, Mr. Stephens did not give specific reference to DOT driving hour concerns.

For the reasons stated herein, the administrative law judge concludes that the claimant's reasons for leaving were not attributable to the employer. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated December 27, 2013, reference 01, is affirmed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs