

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JEFF E KRESS
2745 HEATHERVIEW CR
MARION IA 52302

FEDERAL EXPRESS CORP
c/o TALX UCM SERV, UC EXPRESS
PO BOX 182366
COLUMBUS OH 43218-2366

Appeal Number: 05A-UI-03546-JTT
OC: 02/27/05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) - Voluntary Quit
871 IAC 24.26(21) – Quit or Be Discharged

STATEMENT OF THE CASE:

Jeff Kress filed a timely appeal from the March 28, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 21, 2005. Mr. Kress participated in the hearing. Beverly Lamb of TALX UC Express represented Federal Express and presented testimony through Stephanie Murry, Operations Manager. Exhibits One through Ten were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jeff Kress was employed by Federal Express as a part-time DOT/CDL Swing Courier from October 7, 2004 until March 2, 2005, when he voluntarily quit when faced with a prospect of immediate

discharge. Based on events of February 26, 2005 and documentation related thereto, the employer had conducted an investigation and concluded that Mr. Kress had falsified delivery information regarding packages that were assigned to him for delivery. The employer had suspended Mr. Kress on February 28, 2005, while it conducted its investigation. The employer called Mr. Kress back in to the workplace on March 2, 2005 for the purpose of reviewing results of its investigation and discharging Mr. Kress from the employment. When Mr. Kress arrived, he asked whether the employer intended to discharge him. His supervisor, Mark Melchert, indicated that was the case. Mr. Kress then presented a letter of resignation. The employer, in lieu of discharging Mr. Kress, accepted the resignation.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Kress' voluntary quit was for 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 24.26(21) 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:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The evidence in the record establishes that Mr. Kress was compelled to resign the employment or face immediate discharge. Under Workforce Development rules, such a separation is not considered to be a voluntary quit that would disqualify Mr. Kress for benefits. See 871 IAC 24.26(21). Accordingly, no disqualification will enter. Benefits are allowed, provided Mr. Kress is otherwise eligible.

DECISION:

The Agency representative's March 28, 2005, reference 01, decision is reversed. The claimant's quit was for good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

jt/pjs