

**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**

**REY N GARDENAS
11 CENTURY ST
IOWA CITY IA 52240**

**SCHNEIDER NATIONAL CARRIERS INC
c/o ADP UNEMPLOYMENT GROUP
PO BOX 66744
ST LOUIS MO 63166-6744**

**Appeal Number: 06A-UI-01200-CT
OC: 01/01/06 R: 03
Claimant: Respondent (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
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Schneider National Carriers, Inc. (Schneider) filed an appeal from a representative's decision dated January 20, 2006, reference 01, which held that no disqualification would be imposed regarding Rey Cardenas' separation from employment. After due notice was issued, a hearing was held by telephone on March 3, 2006. Mr. Cardenas participated personally. The employer participated by Dave Carlson, Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Cardenas was employed by Schneider from December 17, 2004 until January 2, 2006 as a full-time over-the-road driver. He quit the employment because he did not want to drive nights. His CDL does not restrict him to day driving. Mr. Cardenas declined the available day work because he would only be home on alternate weekends.

Schneider did not make any promises to Mr. Cardenas at the time of hire that he would only be driving during daylight hours. The work he was performing initially was during day hours. In August of 2005, the employer announced that the account Mr. Cardenas had been driving for, Pet Smart, was changing its delivery times. Loads were to be picked up at 10:00 p.m. Mr. Cardenas attempted to work the new schedule but found that he became tired. He did not have any accidents while driving at night. When he gave notice on December 21, he was made aware of jobs the employer had for day driving. Mr. Cardenas was not interested in the day jobs because he would not be home as often as he desired. Continued work would have been available if he had not quit.

Mr. Cardenas has received a total of \$1,926.00 in job insurance benefits since filing his claim effective January 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Cardenas was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Cardenas quit his employment with Schneider because he was unwilling to work during times the employer had work available. He had been driving days. However, there had been no promises by the employer that he would only be provided daytime work. As a motor carrier, the employer would be called upon to make deliveries on a timetable established by the customer. As a driver, Mr. Cardenas knew or should have known that work as an over-the-road driver might involve driving at night in order to meet his employer's customer's needs. Inasmuch as there had been no promises that he would be limited to daytime work, the fact that his work was switched to nights did not constitute a change in the terms and conditions of the employment. Moreover, there was no physical or medical reason Mr. Cardenas could not drive at night. There were no restrictions on his driver's license that prevented him from driving at night. The fact that he did not like night driving did not constitute good cause attributable to the employer for quitting.

The employer attempted to retain Mr. Cardenas in the employment by offering him work he could perform during day hours. He declined the available work for personal reasons. It was unreasonable for Mr. Cardenas to expect the employer to customize a job to meet all of his requirements and personal needs. For the reasons stated herein, the administrative law judge concludes that Mr. Cardenas did not have good cause attributable to the employer for quitting. Accordingly, benefits are denied.

Mr. Cardenas has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated January 20, 2006, reference 01, is hereby reversed. Mr. Cardenas voluntarily quit his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Cardenas has been overpaid \$1,926.00 in job insurance benefits.

cfc/tjc