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

ROBERT J ZACH
Claimant

APPEAL NO: 13A-UI-02591-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADM TRUCKING INC
Employer

OC: 01/20/13
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 1, 2013 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant quit his employment for qualifying reasons. The claimant participated in the hearing. Doug Traut, the terminal manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

FINDINGS OF FACT:

The claimant started working full time for the employer as a pre-loader in December 2010. As a pre-loader the claimant worked ten to twelve-hour shifts, hooking up empty trailers and then pulling filled trailers out of the dock and then dropping the trailer. The claimant earned $16.40 an hour.

The claimant was injured at work on March 22, 2012. When the claimant was released to work with work restrictions, he worked as a driver delivering germ for four to five weeks. The claimant returned to his pre-loader position in late September 2012. A driver does not earn an hourly salary. The employer pays a driver by the mile.

The employer intends to have drivers home every night. If there are not any problems, a driver drives 500 to 550 miles a day and is paid for any delays. A driver may not run germ all the time and if germ cannot be loaded, a driver would be assigned a longer load. A longer load may require a driver to be away from home overnight. Since the claimant started work in the afternoon, 75 to 80 percent of the time he would run germ to another location.

On November 28, 2012, the employer told the claimant he would no longer be working as a pre-loader, but instead would work as a driver. The employer decided to make this change because the claimant had incidents with other employees, other drivers. The employer

concluded the claimant could no longer work with plant staff and still do his job properly. The claimant did not want to take loads out and wanted a guaranteed hourly wage. The claimant quit on November 28, 2012, because the employer would no longer allow him to work as a pre-loader and the claimant did not want to work as a driver.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

The law presumes a claimant leaves employment with good cause when he quits because of a substantial change in the employment contract. 871 IAC 24.26(1). Changing the claimant from a pre-loader who worked ten to twelve-hours a shift and earned an hourly wage to a driver who is paid by the mile and may have to stay overnight on some of his loads amounts to a substantial change in his employment. The claimant established he quit for reasons that qualify him to receive benefits.

(The claimant did not establish a claim for benefits until a subsequent employer laid him off from work.)

DECISION:

The representative's March 1, 2013 determination (reference 02) is affirmed. The claimant voluntarily quit his employment after the employer substantially changed his job from a pre-loader to a driver. The claimant quit for reasons that qualify him to receive benefits. As of January 20, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

_____
Debra L. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

dlw/tll