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

DALE D KINION
1406 COUNTY RD E-29 IOWA
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Appeal Number: 04O-UI-08682-SWT
OC: 05/16/04 R: 04
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 3, 2004, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. The appeal was consolidated with appeal 04O-UI-08683-SWT. A telephone hearing was held on September 13, 2004. The claimant participated in the hearing with his representative, Robert Shimanek, attorney at law, and a witness, Judy Kinion. Brenda Kay participated in the hearing on behalf of the employer. Exhibits A, B, and C were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant was hired to work full time as an over-the-road truck driver in July 2003. He was hired to drive as a team driver with his wife, Judy Kinion. Dennis VanderHeiden is the owner of the employer. Brenda Kay is the bookkeeper for the business.

Initially the truck that the Kinions drove was leased to Landstar Trucking. In March 2004, the lease with Landstar was terminated. The employer arranged to lease the truck to Lakeview Motor Enterprises (LME). Kay discussed the change in the leasing arrangement with the Kinions and asked if they were interested. She told them that the loads were primarily in the Midwest. She offered them 40 cents per mile for team driving for LME. The Kinions agreed to drive for LME for 40 cents per mile. They were not told that the 40 cents per mile would depend on their driving a minimum number of miles per week.

When the Kinions went through orientation, they told the LME employee who conducted the orientation about their understanding that the loads were mainly in the Midwest, which they liked. They never told him that they would only haul in the Midwest. They were willing to haul loads wherever LME had work available. They never turned down any loads offered by LME.

The Kinions drove for the employer leased to LME from March 23 to May 14, 2004, and were paid 40 cents per mile for their work. They drove all the miles offered to them and had requested more miles from LME but were told that the freight had gotten slow. In May 2004, VanderHeiden and Kay were dissatisfied with the number of miles the Kinions were driving. About a month after the Kinions began driving for LME, Kay talked to the person at LME who had done the orientation and believed that they were restricting themselves to only Midwest hauls, which was not accurate. They did not speak to the claimant or Judy Kinion about their belief that the Kinions were restricting where they were willing to drive.

On about May 15, 2004, Kay wrote a memo stating that based on the low number of miles they were driving, the employer was going to set up a new pay rate for them if they did not drive a minimum of 4,500 miles per week of 32 cents per mile, which was the rate for solo drivers. The memo stated that they would be paid 40 cents per mile if they drove 4,500 miles per week or more.

The Kinions were upset by the letter since they did not have any control over the number of miles LME gave them to drive. They told Kay that they could not accept the change in their compensation. Kay had indicated a willingness to work with the Kinions on the pay rate, but on May 18, 2004, VanderHeiden called the claimant and told him that if they did not want to drive for “32 fucking cents per mile” that they should get their “fucking stuff out of the truck.”

On May 19, 2004, the Kinions sent a letter to VenderHeiden and Kay stating that they could not accept the 32 cents per mile and were turning in their company property and quitting. The claimant voluntarily quit employment because of the substantial change in the employment agreement.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without 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(1) 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:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The employer unilaterally reduced the rate of pay agreed to by the parties. The employer believed that the Kinions were restricting where they were willing to drive, but never spoke to them before cutting the rate of pay by 20 percent. In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in hours was, as a matter of law, a substantial change in the contract of hire, citing cases from other jurisdictions that had held reductions ranging from 19 percent to 26 percent were substantial. Id. at 703. Based on the reasoning in Dehmel, a 20 percent reduction in pay is also substantial, and the claimant had good cause attributable to the employer to leave employment.

The claimant has also satisfied the requirements of Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The Iowa Supreme Court ruled that to qualify for unemployment insurance benefits, an employee must take the reasonable step of informing the employer that the change in the contract of hire was unacceptable before an employee takes the drastic step of quitting employment. Id. at 448. After the Kinions informed Kay that the pay cut was unacceptable, VanderHeiden made his position clear that they had to take the pay cut or leave.

DECISION:

The unemployment insurance decision dated June 3, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs