

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SOLVEY CASTRO
Claimant

APPEAL NO: 15A-UI-08629-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

OC: 07/05/15
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 22, 2015, reference 01, decision that denied benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 25, 2015 and continued on September 10, 2015. The claimant participated in the hearing with witness/co-driver Oscar Milian and was represented by Attorney Tom Duff. Wendy Nerring, Safety/Human Resources Manager, participated in the hearing on behalf of the employer and was represented by Attorney Sasha Monthei. Claimant's Exhibits A through D and Employer's Exhibit One was admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for Barr-Nunn Transportation from January 22, 2013 to June 30, 2015. She voluntarily left her employment because she believed the employer was not accommodating her doctor's restrictions regarding her pregnancy.

On March 10, 2015, the claimant provided the employer with a doctor's note, dated March 5, 2015, stating the claimant needed to be able to exit the truck and walk around every three hours (Claimant's Exhibit A). The employer accommodated the claimant's restrictions by dispatching her and her driving partner, Oscar Milian, on loads where she could stop approximately every three hours. The employer was not able to guarantee she could stop every three hours exactly given the nature of the job and the fact the truck might not have been in a place it could pull over or stop at the three-hour mark but would have to wait until they came to a truck stop or rest area. The claimant never complained to the employer that she was not being allowed to make her three-hour stops.

On June 24, 2015, the claimant submitted another doctor's note to the employer stating, "Patient needs to be in bed rest until her due date 09/21/2015 and she will have 6 weeks for her postpartum 10/19/2015. Patient will not be able to drive a truck due to not being able to have breaks during work. Patient needs to rest and her due date is getting closer" (Claimant's Exhibit B). The claimant called Wendy Nerring, Safety/Human Resources Manager, and asked her if she would receive paid maternity leave and Ms. Nerring explained the employer did not offer that benefit. The claimant then asked her about short-term disability and Ms. Nerring told her the employer did not offer that program either. Ms. Nerring informed the claimant that she would be covered by family and medical leave (FML), which would insure that her job would be held for her for 90 days while she was off work due to her pregnancy, but told her FML is also an unpaid leave. The claimant became very upset and began crying before Mr. Milian took the phone from her.

Ms. Nerring had talked to Dispatcher Bob Smith about insuring the claimant be dispatched on loads based on her restrictions so she could stop every three hours. On May 6, 21, 22 and 28, and June 10, 16, and 22, 2015, Mr. Smith gave the claimant and Mr. Milian different loads after they stated they did not have enough time to deliver and allow the claimant to take her breaks. The claimant and Mr. Milian did refuse loads they did not feel they had time to deliver on time with the claimant's required breaks. Ms. Nerring also reviewed the claimant's driver logs from March 10 through June 30, 2015, and at no time was the claimant prevented from stopping and taking her breaks per her doctor's restrictions.

On June 30, 2015, the claimant and Mr. Milian dropped the truck off at one of the employer's North Carolina terminals and resigned their positions with the employer. They left a note with an employee in the terminal and left. The employer had continuing work available for the claimant had she not left her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 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.

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant's stated reason for leaving her employment with Barr-Nunn Transportation was that she was not allowed to take breaks every three hours while on the road after learning she was pregnant in March 2015. The employer disputes the claimant's testimony that she was not

able to take breaks every three hours, although it agrees she could not always take a break exactly at the three-hour mark due to the location of the truck and whether she and Mr. Milian could pull over in order for her to take a break.

After Ms. Nerring was notified of the claimant's restrictions she spoke to Dispatcher Mr. Smith and he stated he was dispatching the claimant and Mr. Milian on loads that met the claimant's restrictions. When the claimant and Mr. Milian told Mr. Smith seven times in May and June 2015 that they did not have enough time to take the claimant's required breaks and still make the delivery on time, they were given different loads by the dispatcher. Neither the claimant nor Mr. Milian ever complained to Safety/Human Resources Manager Ms. Nerring that she did not have enough time to take her breaks while on the road.

The claimant resigned six days after learning the employer did not offer paid maternity leave or short-term disability. She was extremely upset upon hearing that information and worked the rest of the week before deciding to turn in the truck and resign her position. Because the dispatcher changed the loads for she and Mr. Milian each time he was asked to do so in May and June 2015 and the claimant never went to Ms. Nerring about any issues involving not being able to take her breaks every three hours, the administrative law judge must conclude the claimant has not demonstrated that her leaving was due to good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits must be denied.

DECISION:

The July 22, 2015, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs