

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANICE K PASYK**  
Claimant

**APPEAL NO. 09A-UI-05499-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAX MORGAN MOTOR FREIGHT LLC**  
Employer

**Original Claim: 03/01/09  
Claimant: Respondent (2-R)**

Iowa Code section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 3, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 5, 2009. Claimant Janice Pasyk participated. Clint Feuerbach, owner, represented the employer and presented additional testimony through Chris Bishop, Operations Manager. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

**ISSUE:**

Whether Ms. Pasyk separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Janice Pasyk began working for the employer as an over-the-road truck driver on January 2, 2009 and last performed work for the employer on February 21, 2009. Ms. Pasyk resides in Ohio. When Ms. Pasyk was hired, she was hired as part of a driving team. The other member of the driving team was Vince Mathers. Ms. Pasyk and Mr. Mathers were friends prior to the employment and have worked as a driving team for other employers. Ms. Pasyk and Mr. Mathers split the 42 cents-per-mile pay and drove 3,000 to 4,000 miles per week on average.

On February 21, 2009, Clint Feuerbach, owner, discharged Mr. Mathers from the employment based on abusive conduct that Mr. Mathers directed at other employees, including Ms. Pasyk. On the final return trip in the employer's truck, Ms. Pasyk contacted the employer and said she was in fear for her life, that she did not know what to do, that Mr. Mathers was threatening to take the truck to Ohio.

At the time the employer notified Mr. Mathers of his discharge, Chris Bishop, Operations Manager, offered Ms. Pasyk continued employment as a solo driver. Ms. Pasyk's pay would increase to 35 cents per mile and she would operate the employer's truck from 2,300 to 3,000 miles per week. Ms. Pasyk's gross pay would increase. Ms. Pasyk would operate the

same truck she and Mr. Mathers had operated as a team. The truck was available. Ms. Pasyk said she would think about it.

On February 23, Mr. Mathers and Ms. Pasyk appeared at the employer's office for the purpose of collecting their pay for services performed. The pair met briefly with Mr. Feuerbach and then departed. Ms. Pasyk never provided the employer with a response to the continued offer of employment. Ms. Pasyk left with Mr. Mathers and never returned.

#### **REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence indicates that the employer at no point said anything to Ms. Pasyk or otherwise indicated to Ms. Pasyk that she was discharged from the employment. The weight of the evidence indicates that Ms. Pasyk elected to quit because her driving partner had been discharged. The weight of the evidence indicates that Ms. Pasyk and Mr. Mathers are most likely more than mere driving partners and that this additional relationship factored into Ms. Pasyk's decision to leave the employment, rather than continue as a solo driver with better compensation. The weight of the evidence indicates that any changes in the conditions of the employment were favorable to Ms. Pasyk. These would have included removing Ms. Pasyk from the work situation with Mr. Mathers that prompted her to notify the employer she was in fear for her life.

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.

The weight of the evidence indicates that Ms. Pasyk quit the employment for personal reasons and not for good cause attributable to the employer. Accordingly, Ms. Pasyk is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Pasyk.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the

Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representatives April 3, 2009, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw