

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN J STRUSE
Claimant

FEDERAL EXPRESS CORP
Employer

APPEAL 21A-UI-17655-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/23/21
Claimant: Appellant (1)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On August 9, 2021, the claimant/appellant filed an appeal from the July 28, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant voluntarily quitting due to change in employment. The parties were properly notified about the hearing. A telephone hearing was held on October 1, 2021. Claimant participated at the hearing. Employer participated through hearing representative Joel Kincaid and witness, Operations Manager, Thomas Sprague.

ISSUE:

Was the separation a voluntary quit with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 6, 2015. Claimant last worked as a full-time Courier. Claimant was separated from employment on May 17, 2021, when he resigned.

Prior to claimant's separation claimant had a courier route that was his bid route. The route covered the Grinnell area and claimant had the route for approximately six years. Claimant's shift consisted of four ten hour days. Claimant would work Mondays, Wednesdays, Thursdays, and Fridays. Claimant had Tuesdays off. Claimant was paid an hourly rate of \$20.64 an hour and overtime. Claimant was not paid other compensation on top of the hourly rate.

On February 17, 2021, claimant was notified that his DOT license was set to expire and that he needed to obtain a DOT physical to renew his license. The employer requires employees to obtain the physical through Concentra, which is a third party. Concentra then directs the employees where to go to obtain their DOT physical. On February 18, 2021, claimant went to the doctor he was directed to go to by Concentra. The doctor failed claimant during his physical due to a medication that he was taking pursuant to a prescription.

Claimant went to his personal physician who is a DOT certified medical provider. Claimant passed his physical and provided the certification to the employer notifying them he had passed the physical. The employer allowed claimant to continue working his route for a week. The employer then notified claimant that they had made a mistake and they could not allow him to continue driving until he passed a physical with a provider that was directed through Concentra.

After some discussion and another physical the claimant realized that he would not be able to pass the DOT certified physical until he stopped using his prescription. Claimant contacted his physician and was informed that it would take four weeks for the prescription to be out of his system. Claimant had another physical on May 6, 2021 and passed the DOT physical.

Meanwhile, the employer put claimant on a leave of absence because he could not perform his job duties until he obtained his DOT licensure. The employer has a policy that if an employee is gone for more than 45 days then they put the employee's route up for bid so another employee can bid the route. The employer put claimant's Grinnell route up for bid since he was gone more than 45 days.

On May 17, 2021, claimant returned to work and had a meeting with his supervisor, Thomas Sprague, and another employee, Brady. Claimant was notified that his route was no longer available and that he was assigned to the Greenfield route. The employer has a policy that if a person is assigned a route that when a route comes up for bid then the assigned employee can immediately bid to be assigned to a different route. If an employee bids for a job and gets the bid then they are required to stay on the route for a year before they can bid for a new route. Different routes frequently come up for bid and the claimant could immediately bid for a different route when he found a route he wanted to bid on.

Claimant was upset that he was assigned the Greenfield route and wanted his previous route back or to be assigned to the Marshalltown route. The employer explained that the Greenfield route was assigned to claimant because it matched his previous shift for days and hours. Claimant would be paid the exact same rate of pay and work the same hours. Claimant would perform the same duties that he previously performed. Neither party could verify if the parcel volume or number of deliveries would be different. Claimant would not experience a financial loss being assigned to the new route. Claimant testified that he quit because he was not offered a reasonable accommodation but claimant acknowledged he did not request an accommodation. Claimant turned in his badge and voluntarily resigned because he did not want to be assigned to the Greenfield route.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Admin. Code r. 871-24.26(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.

(emphasis added).

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.

Iowa Admin. Code r. 871-24.25(27) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). In this case the claimant's hours remained the same, rate of pay remained the same, and duties remained the same. Claimant was required to cover another territory but this did not change the location of his employment. There was not a drastic modification in the type of work the claimant was required to perform. The claimant's argument that the employer was not following protocol regarding bidding routes may be valid, however, under Iowa law he has not met the burden of proof to qualify for unemployment benefits. The claimant has not established that there was a substantial change in his contract of hire that would make him eligible for unemployment benefits. Unemployment benefits are only available if a claimant qualifies for them according to Iowa law.

An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. ___-___/___-___, Iowa Ct. App. filed ___, 1986). The employer had the Greenfield route available and they assigned the claimant accordingly. The claimant did not want to work the route that he was assigned so he quit rather than perform the assigned work. This is considered a voluntary quit without good cause attributable under Iowa law and the claimant does not qualify for benefits. Benefits are denied.

DECISION:

The July 28, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. Benefits are denied. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

October 5, 2021
Decision Dated and Mailed

cs/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.