

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

JERRY K GOODWIN
507 E LANCASTER ST
DEWITT NE 68341

NID INC
365 COTTONWOOD DR
PO BOX 38
GARNER IA 50438

Appeal Number: 06A-UI-07291-JTT
OC: 06/18/06 R: 12
Claimant: Appellant (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:

Jerry Goodwin filed a timely appeal from the July 7, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 7, 2006. Mr. Goodwin participated in the hearing. Operations Manager Jeremy Gouge represented the employer and presented additional testimony from payroll employee Stephanie Gardner.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jerry Goodwin was employed by NID as a full-time over-the-road truck driver from November 30, 2004 until January 10, 2006, when he quit. Mr. Goodwin had requested vacation to commence January 11, 2006. On December 30, the employer had sent an e-mail message to the computer in Mr. Goodwin's truck, alerting Mr. Goodwin to a load that needed to be picked up in

Omaha on January 2 or 3 and delivered to the employer's facility in Garner, Iowa. This was the employer's usual way of dispatching loads and Mr. Goodwin was expected to review his e-mail daily. The employer's computer system would notify the employer when Mr. Goodwin reviewed the dispatch e-mail. Once Mr. Goodwin delivered the load in Garner, the employer intended to have Mr. Goodwin use a different truck to haul a load to Nebraska. The employer was mindful of Mr. Goodwin's request for time off and had structured the loads to get Mr. Goodwin back to his home in Dewitt, Nebraska in time for his scheduled vacation. The employer had specifically arranged the load from Garner to Nebraska to assist Mr. Goodwin in getting back home. Mr. Goodwin had not complied with the employer's requirement that he leave a personal vehicle at the employer's Garner facility so that he would have personal transportation back home. When Mr. Goodwin had not read or responded to the e-mailed dispatch by January 3, Operations Manager Jeremy Gouge became concerned. Mr. Gouge attempted to contact Mr. Goodwin by telephone, but got no response. Mr. Gouge waited until January 9 before he contacted law enforcement in Mr. Goodwin's hometown. The law enforcement authorities confirmed that the employer's truck was sitting outside Mr. Goodwin's home. At the suggestion of law enforcement authorities, Mr. Gouge contacted Mr. Goodwin's father for assistance in contacting Mr. Goodwin.

On January 10, Mr. Goodwin telephoned Mr. Gouge and indicated his intention to quit the employment. Mr. Goodwin told Mr. Gouge that he was leaving for San Diego on January 11 and that if the employer needed its truck, the employer would have to come to Nebraska and get it. The employer had already dispatched two employees to collect the truck. Mr. Goodwin indicated that he was going to report the employer for violating Department of Transportation regulations and alleged that the employer had not allowed him enough down time to comply with the D.O.T. regulations. Since October 16, Mr. Goodwin had been home for 12 hours on October 16-17, 12 hours on October 23-24, three days during October 28-November 1, three days during November 24-27, 12 hours during December 4-5, and three days during December 24-27. Mr. Goodwin had arrived home in Nebraska on January 1 after stopping over at a friend or relative's home on the return trip from the east coast. By virtue of not responding to the employer's dispatch, Mr. Goodwin ended up being home January 1 through 10 before notifying the employer of his intention to quit the employment. The employer had assigned loads to Mr. Goodwin consistent with his request to earn more money prior to leaving for his scheduled vacation. In early November 2005, the employer had provided Mr. Goodwin with a new truck. Mr. Goodwin was unhappy that a problem with the cruise control had gone unfixed. In August, Mr. Goodwin's old assigned truck had broken down on a Sunday and Mr. Goodwin was unhappy with the employer's request that he replace the alternator himself, rather than wait another day to get the truck into the repair shop. However, the employer authorized Mr. Goodwin to get a motel room for the night.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Goodwin's voluntary quit was for good cause attributable to the employer. It does not.

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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

Quits due to dissatisfaction with the work environment, due to a personality conflict with a supervisor, or in lieu of performing assigned work as instructed are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21), (22), and (27).

The evidence in the record does indicate that Mr. Goodwin had been spending a great deal of time on the road and little time at home during October through December 2005. However, the evidence also indicates that this busy schedule was due, at least in part, to Mr. Goodwin's desire to make money prior to his vacation. By the time the employer sent the December 30 dispatch, Mr. Goodwin was burnt out. The reasonable thing to do would have been to notify the employer of that fact and discuss the need for more time at home. Instead of doing that, Mr. Goodwin failed to maintain appropriate contact with the employer for several days and then notified the employer of his intention to quit. The evidence does not establish intolerable or detrimental working conditions that would have prompted a reasonable person to quit the employment. Instead, the evidence establishes that Mr. Goodwin quit because he no longer wished to perform his assigned duties as instructed by the employer. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Goodwin voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Goodwin is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Goodwin.

DECISION:

The Agency representative's July 7, 2006, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

jt/pjs