

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DWAIN A BANKHEAD
Claimant

APPEAL NO. 16A-UI-12243-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 10/23/16
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Dwain Bankhead filed a timely appeal from the November 8, 2016, reference 03, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Bankhead had voluntarily quit without good cause attributable to the employer. After due notice was issued, a hearing was held on December 2, 2016. Mr. Bankhead participated. Kim Bateman represented the employer. The administrative law judge took official notice of the agency's record of quarterly wages that the employer paid to the claimant and received Exhibit A into evidence.

ISSUE:

Whether Mr. Bankhead's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dwain Bankhead was employed by CRST Van Expedited, Inc., as a full-time over-the-road commercial truck driver from July 2015 until June 1, 2016, when he voluntarily quit the employment. Mr. Bankhead's immediate supervisor was dispatcher Brandy Rae Moone. Mr. Bankhead's home was in Las Vegas. Mr. Bankhead was assigned to a terminal in Riverside, California. Mr. Bankhead was assigned to a co-driver, Lionel Banta. The purpose of having two drivers assigned to the truck was to ensure that the truck was rolling 24 hours per day as much as possible and, therefore, generating as much revenue as possible. The employer paid Mr. Bankhead by the mile driven. At the start of the employment, the pay per mile was 32 cents. By the end of the employment, the pay had risen to 38 cents per mile driven. At the time Mr. Bankhead was hired, the employer told him he could expect to make \$1,000.00 to \$1,200.00 per week in income. That did not turn out to be the case. Mr. Bankhead provided notice to the employer that he was quitting after the employer left him and his co-driver sitting in Salt Lake City, Utah without a load for about six days. The employer subsequently paid Mr. Bankhead \$120.00 in layover pay for the three of the days he was without a load, but that amount did not cover all the days Mr. Bankhead was sitting without a load and was an amount substantially less than Mr. Bankhead would have made if he had been assigned freight to haul during that period. During the extended period without work, Mr. Bankhead contacted the employer to inquire why no load was being provided and the employer did not have a good answer. Mr. Bankhead concluded he could no longer afford to remain in the employment due to

the absence of mileage income for the extended period when the truck was idle. The employer had previously made decisions, including reassignment of loads, that diminished the amount of income Mr. Bankhead could generate, but the six-day layover during the last week of the employment was the most extreme example.

In making the decision to quit the employment, Mr. Bankhead also considered the employer's decision in late April to compel him and his co-driver to operate the tractor-trailer rig from Pennsylvania to California without a functioning engine break. The employer denied Mr. Bankhead and his co-driver's request to get the engine break fixed in Pennsylvania. Mr. Bankhead concluded that the employer's decision placed him and his co-driver at substantial risk. On the trip back to the California terminal, Mr. Bankhead and his co-driver had to travel through mountainous areas and had to stop multiple times to let the wheel breaks cool off.

REASONING AND CONCLUSIONS OF LAW:

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 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). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such

cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The administrative law judge notes that the employer elected not to present testimony from anyone with personal knowledge of the particulars of Mr. Bankhead's employment or his separation from the employment. The employer had the ability to present such testimony. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes a voluntary quit for good cause attributable to the employer based on a substantial change in the conditions of the employment and intolerable working conditions. The substantial change was the absence of pay for the roughly six days the employer had Mr. Bankhead and his co-driver sitting idle without a load and without a means to generate income. This was not dissatisfaction with the wages. Rather, it was an absence of wages while Mr. Bankhead was compelled to be away from home, living out of semi with another person, and obligated to remain idle and available to the employer. A reasonable person would not tolerate such working conditions. In other words, the absence of pay was itself an intolerable working condition. The three days of \$40.00 layover pay was unsatisfactory compensation for the time commitment required of Mr. Bankhead. The weight of the evidence establishes a second intolerable and detrimental working condition based on the employer's requirement that Mr. Bankhead and his co-driver drive across the country without a working engine break. Mr. Bankhead reasonably concluded that the employer's decision subjected him and his coworker at unreasonable risk of injury.

Because Mr. Bankhead quit the employment for good cause attributable to the employer, he is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The November 8, 2016, reference 03, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs