

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L WEST
Claimant

APPEAL NO. 13A-UI-02837-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 02/10/13
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

David West filed a timely appeal from the March 7, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 5, 2013. Mr. West participated. Dave Dalmasso, Human Resources Representative, represented the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: David West was employed by Heartland Express, Inc., of Iowa as a full-time over-the-road truck driver from September 2011 until September 27, 2012, when he voluntarily quit. Mr. West's immediate supervisor was Fleet Barry Garretson. Mr. West was assigned to the employer's long haul division, which meant he would only get home once every two or three months.

Mr. West quit the employment after the employer repeatedly failed to honor requests for time off that had been made well in advance and approved well in advance. The final incident that prompted Mr. West's quit was the employer's failure to get him home in time for a 30th anniversary trip to Germany. Mr. Garretson had agreed to get Mr. West back home by September 16, 2012 so that Mr. West and his wife could catch a flight the next afternoon to start their anniversary trip. Instead, the employer assigned Mr. West a load of freight on the East Coast that prevented Mr. West from getting home before September 19, 2012. The employer has about 3,000 drivers. The final incident followed another incident a few months earlier wherein Mr. West had requested and been approved for time off so that he could attend a V.A. medical appointment. The employer assigned Mr. West a load that prevented Mr. West from attending the appointment as scheduled. Mr. West had to reschedule the appointment to the displeasure of his doctor.

REASONING AND CONCLUSIONS OF LAW:

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). 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).

The administrative law judge notes that the employer did not present testimony from anyone with personal knowledge of Mr. West's employment or 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).

During the hearing, the employer made the rather implausible assertion that despite having about 3,000 drivers, the employer could not make another driver available for the East Coast load so that the employer could honor Mr. West's request for time off after approving the request well in advance. The administrative law judge found the assertion to be completely without merit.

The weight of the evidence indicates that the employer did indeed create intolerable working conditions for Mr. West. The employer knowingly and willfully failed to honor Mr. West's legitimate need for time off. The employer did so after approving the legitimate requests for time off well in advance. The nature of the work kept Mr. West away from home for months at a time. A reasonable person would conclude that the situation would make it all the more important for Mr. West to have time and opportunity to attend to personal matters during scheduled and approved time off. The employer suggested at the hearing that Mr. West should have gone up the chain of command prior to quitting. Mr. West took the reasonable step of bringing his concerns to the attention of his immediate supervisor. Under the Hy-Vee case, cited above, Mr. West was under no obligation to do more. Mr. West voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. West is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. West.

DECISION:

The Agency representative's March 7, 2013, reference 01, 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/pjs