

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN P HOCKENBERRY
Claimant

APPEAL NO. 08A-UI-03121-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROBERT W TAUKE
TAUKE TRANSFER
Employer

OC: 02/24/08 R: 04
Claimant: Respondent (2)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Tauke Transfer, filed an appeal from a decision dated March 18, 2008, reference 01. The decision allowed benefits to the claimant, Kevin Hockenberry. After due notice was issued a hearing was held by telephone conference call on April 14, 2008. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Office Manager Lois Tauke.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Kevin Hockenberry was employed by Tauke Transfer from April 3, 2007 until February 25, 2008, as a full-time over-the-road trucker.

On February 22, 2008, the claimant had picked up a load in Chicago, Illinois, which he was to deliver to Peosta, Iowa and Davenport, Iowa, the morning of Monday, February 25, 2008. Also on February 22, 2008, Office Manager Lois Tauke had asked Mr. Hockenberry to bring his tractor and trailer to the yard in Cascade, Iowa, because he had been involved in an accident in Georgia and an assessment of the damage needed to be done. He said he could not do it on Friday or during the weekend because he did not have a way to get back home from Cascade, Iowa, to his home in Fruitland, Iowa. Mr. Hockenberry also talked to two other drivers that day, Frank and Rex. He told them he had no intention of delivering the load to the customers on Monday, and he said he was tired of driving truck, and made negative comments on the CB radio about Tauke Transfer.

On Monday the broker called the employer and asked if the load had been delivered. The employer tried to call the claimant on his personal cell phone and the cell phone issued to him by the company. There was no answer and it was not until 11:00 a.m. the claimant called and said had not delivered the loads and he had been waiting for his girl friend to get off work so she

could drive to Cascade with him to drive him home once he had delivered the tractor and trailer to the yard.

By that time the employer had located the trailer in a truck stop in Muscatine, Iowa, and Office Manager Lois Tauke told the claimant to take the tractor to the trailer, and leave the company cell phone and credit cards so the other driver could use them as he made the deliveries. The employer considered him a voluntary quit for failing to make the deliveries as required. It was later learned the claimant believed he had been fired when he had been told to bring the tractor and trailer to the yard for the damage assessment. The employer did not intend to fire him but did decide to change his route.

Kevin Hockenberry filed a claim for unemployment benefits with an effective date of February 24, 2008. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

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.

Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer LaGrange v. IDJS, (Unpublished, Iowa App. 1984). The administrative law judge considers this reasoning to be applicable in the present case. Mr. Hockenberry was never told he was fired, only to bring in the tractor and trailer so the employer could assess the amount of damage incurred in the accident. His decision to refuse to deliver a load which was on his truck, and which he left sitting at a truck stop, is sufficient indication he did not intend to return to work.

The record establishes the claimant quit without good cause attributable to the employer and he is disqualified.

DECISION:

The representative's decision of March 18, 2008, reference 01, is reversed. Kevin Hockenberry is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs