

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN B DINGMAN
Claimant

APPEAL NO. 17A-UI-03590-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDEX FREIGHT EAST INC
Employer

OC: 03/12/17
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Code Section 96.5(2)(a) - Discharge

STATEMENT OF THE CASE:

John Dingman filed a timely appeal from the March 27, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Dingman had voluntarily quit on March 10, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 27, 2017. Mr. Dingman participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A was received into evidence.

ISSUE:

Whether Mr. Dingman separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: John Dingman was employed by FedEx Freight East, Inc., as a full-time truck driver from 2011 until March 10, 2017, when he quit in response to a change in the conditions on the employment. Mr. Dingman's duties throughout the employment involved operating a tractor-trailer rig to deliver freight to customers. On February 22, 2017, Mr. Dingman was involved in a motor vehicle collision while operating the employer's truck in Omaha. Mr. Dingman did not cause the collision. Instead, the incident resulted from an aggressive driver attempting to pass Mr. Dingman on the right as Mr. Dingman was making a right turn. Mr. Dingman was not cited by law enforcement in connection with the collision and retained his commercial driver's license. On March 5, 2017, Rich Bennett, Hub Manager, notified Mr. Dingman that the employer was permanently revoking his authorization to operate the employer's trucks. Mr. Bennett told Mr. Dingman that he could apply for a part-time dock worker position. Mr. Bennett implied that Mr. Dingman would be hired for the part-time dock worker position if he applied for it. As a full-time driver, Mr. Dingman's hourly wage had been \$25.12 per hour. The dock worker position would have paid \$18.00 per hour and would have provided only 25 hours per week.

Mr. Dingman elected to separate from the employment in lieu of acquiescing in the changed conditions.

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.

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 evidence in the record establishes a quit in response to substantial changes in the conditions of the employment. The claims deputy erroneously characterized the separation as a quit in response to a reprimand. What occurred was no mere disciplinary reprimand. The employer's decision to disqualify Mr. Dingman from the full-driver position that paid \$25.12 per hour and to invite Mr. Dingman to apply for a 25-hour per week dock worker position that paid \$18.00 per hour did indeed involve substantial changes in the conditions of the employment. Mr. Dingman's weekly pay in the driver position was \$1,004.80 for a 40-hour work week. Mr. Dingman's weekly pay in the part-time dock worker position would have been \$450.00. The proposed change involved a 55 percent pay cut that would make it substantially more difficult for Mr. Dingman to support himself and his family. Mr. Dingman's quit was for good cause

attributable to the employer. Accordingly, Mr. Dingman is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

The separation from the employment could be analyzed in the alternative as a discharge from the driving position. As such, the legal issue would be whether the discharge was based on misconduct in connection with the employment. See Iowa Code section 96.5(2)(a) (regarding disqualification for benefits based on discharge for misconduct in connection with the employment) and Iowa Administrative Code rule 871 24.32(1)(a) (defining misconduct). The employer did not participate in the appeal hearing and did not present any evidence to meet its burden of proving misconduct in connection with the employment. See Iowa Code section 96.6(2) (regarding burden of proof). The evidence in the record fails to establish misconduct in connection with the employment. Thus, if the separation is analyzed as a discharge from the driving position, the discharge was for no disqualifying reason. Mr. Dingman would be eligible for benefits, provided he is otherwise eligible. The employer's account could be charged for benefits.

DECISION:

The March 27, 2017, reference 01, decision is reversed. The claimant quit the employment on March 10, 2017 for good cause attributable to the employer, based on substantial changes in the conditions of the employment. In the alternative, the claimant was discharged for no disqualifying reason. 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