

**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**

**MITCHELL F LOVE
3347 PARKVIEW DR
NEWTON IA 50208**

**SMITHWAY MOTOR XPRESS INC
PO BOX 404
FORT DODGE IA 50501-0404**

**Appeal Number: 05A-UI-00451-RT
OC: 04-25-04 R: 02
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 Quitting

STATEMENT OF THE CASE:

The claimant, Mitchell F. Love, filed a timely appeal from an unemployment insurance decision dated January 12, 2005, reference 04, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on January 27, 2005, with the claimant participating. Phil Daniels, Assistant Human Resources Manager, participated in the hearing for the employer, Smithway Motor Xpress, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time over-the-road truck driver from November 23, 2004 until he voluntarily quit on December 21, 2004. The claimant voluntarily quit during his first trip by himself for the employer. On December 21, 2004, the claimant used his Qualcom in his truck to message the employer that he was quitting. The claimant quit because the job entailing over-the-road truck driving was not for him and that he felt unsafe and uncomfortable with the job and that he was not ready for the job. The claimant took a six-week course at Des Moines Area Community College learning to be a semi truck driver driving over the road. Much of the class involved actually driving experience. Then the claimant was hired by Midwest Underground driving a truck for five weeks but it was not a semi. The claimant then became employed with the employer and spent three weeks of training with the employer riding with someone else. The claimant had no problems until he went out on his first trip by himself. The claimant's truck died on him and he had some difficulty in getting it off the road. However, the claimant put some anti-gel in his gas and the truck started and operated acceptably. The claimant went on to London, Ohio where he asked the employer for directions. The employer could not give him directions but gave him a phone number to call. The claimant called that number but no one answered. The claimant then tried to find the location himself but got lost. While turning around, the claimant hit an empty phone box. The claimant was nervous and determined that the job was not for him and the job was not what he thought. Nevertheless, the claimant found the delivery site and made the delivery. He then returned to London, Ohio to wait for a load when he was informed by his employer that there may be a delay in getting his load because the employer was trying to get everyone back home for Christmas. The claimant was then given another load to Columbus, Ohio. However, the claimant was unable to get his trailer back from the first shipper. A snowstorm was coming and the claimant again did not feel safe or comfortable and quit.

The claimant really never expressed any specific concerns to the employer about his working conditions. The claimant never indicated to the employer any specific problems nor did he ever ask for any correction of any problems or accommodation. The claimant indicated to the dispatcher that he was having a hard time figuring it out and the dispatcher said that it would take time and he would figure it out. The claimant at no time indicated or announced an intention to quit to the employer if any problems he was having were not addressed by the employer at least prior to his quit. If the claimant had not quit, work would have remained available for him. The claimant could not specifically state what the employer did or did not do that caused him to quit. Pursuant to his claim for unemployment insurance benefits filed effective April 25, 2004 and reopened effective December 19, 2004, the claimant has received no unemployment insurance benefits since reopening his claim and separating from the employer herein.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

871 IAC 24.25(1) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

871 IAC 24.25(21) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (21) The claimant left because of dissatisfaction with the work environment.

871 IAC 24.25(33) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The parties agree, and the administrative law judge concludes, that the claimant voluntarily left his employment on December 21, 2004. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge

concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant kept repeating that he left his employment because he did not feel safe and comfortable. The claimant did not specify exactly what it was that made him feel unsafe or uncomfortable other than he kept repeatedly stating that the job was not for him or the job was not what he thought it was. This was the claimant's first trip by himself for the employer. The claimant received six weeks of training in driving a semi truck over the road from Des Moines Area Community College and further had five weeks of experience driving a straight truck and three more weeks of training with the employer herein. The claimant should have known what the driving was like.

The claimant itemized a number of minor problems he was having on his first trip such as the truck dying on him because his gas was gelled but that he fixed that appropriately and the truck operated acceptably. The claimant indicated that he had some difficulty in finding the destination but that he did locate that destination and made the delivery. The claimant then went to pick up another load and encountered a delay and was unable to get his trailer back to take another load. It appears that these matters are all just problems that arise occasionally in over-the-road truck driving and are primarily a nuisance. There is no evidence that the employer was dissatisfied with the claimant or his performance. The claimant must have known, and should have known, that in every job including over-the-road truck driving there will be problems that arise occasionally. This is true of any job. The claimant kept repeating that he did not feel safe or comfortable and that the job was not for him and that the job was not what he thought. The administrative law judge is constrained to conclude that the bottom line here was that the claimant was dissatisfied with his work environment and this is not good cause attributable to the employer. The claimant stated that he felt unsafe and uncomfortable but does not outline how his job is specifically unsafe or uncomfortable. The administrative law judge must conclude that the claimant has not demonstrated by a preponderance of the evidence that his working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire.

When the claimant was hired he knew he was going to be an over-the-road truck driver and had been trained therefore. When pushed, the claimant could not answer what it was that the employer did or did not do that caused him to quit. There is also no evidence that the claimant ever specifically expressed any concerns to the employer about his working conditions requesting corrections or accommodations and there is no evidence that the claimant ever indicated or announced an intention to quit prior to his quit. The claimant did not give the employer any reasonable opportunity to address his concerns. Work remained available had the claimant not quit. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. The administrative law judge is not without sympathy for the claimant who trained for a job and then took a job only to discover that he did not like that job. However, this is no reason to get unemployment insurance benefits as a result of a quit from a job that he had voluntarily taken and then found he did not like. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of January 12, 2005, reference 04, is affirmed. The claimant, Mitchell F. Love, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer.

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