

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFERY D YEZEK
Claimant

APPEAL NO: 18A-UI-10949-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANDERSONS SANDBLASTING
Employer

OC: 12/03/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 29, 2018, (reference 06) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on November 20, 2018. The hearing was held jointly with 18A-UI-10950-JC-T. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records including the fact-finding documents and Federal Motor Carrier Act. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a driver and was separated from employment on September 22, 2018, when he quit the employment. Continuing work was available.

The claimant was a dedicated truck driver and possessed a commercial driver's license (CDL). He operated three trucks for the employer which was required to comply with Department of Transportation (DOT) guidelines.

The claimant indicated one of the three trucks he was assigned had cracked mirrors and a cracked frame near the hopper. He reported the issues around June 30, 2018 in his pre-inspection log and was informed the issues would be fixed. He continued to drive the vehicle approximately ten more times without issue. In the interim, he had a few confrontations with the employer/owner, Paul Anderson. Once, he called too early in the morning, causing Mr. Anderson to be upset. Another time, Mr. Anderson yelled at him and apologized the next

day. The claimant stated after Labor Day, he felt he was “getting heat” for taking too long on routes or choosing to take back roads instead of the interstate. Approximately one week before he quit, he had contemplated quitting for that reason but did not.

Then on September 22, 2018, the claimant decided to voluntarily put the truck he was driving out of service. He decided to do so after waking up, and his hours being reset to start another day of driving. There was no indication any condition had changed with the vehicle that would have altered its safety status that day. The claimant opined that he voluntarily put the vehicle out of service because it could have been stopped at DOT at an upcoming scale station.

He abandoned the vehicle in Minnesota, and called the employer to tell him where he was leaving the keys. This initiated separation with the employer and delayed delivery. The claimant thereafter offered to return to employment at a lower pay rate but was not rehired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment without good cause attributable to the employer. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

The claimant has the burden of proof to establish he quit with good cause attributable to the employer, according to Iowa law. 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. 871 IAC 24.25. Ordinarily, “good cause” is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O’Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep’t of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). “The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith.” *Wiese v. Iowa Dep’t of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) “[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee’s quit in order to attribute the cause for the termination.” *Id.*

“Good cause” for leaving employment must be that which is reasonable to the average person, 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness’s appearance, conduct, age,

intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the claimant who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record establishes claimant has not met his burden of proof to establish he quit for good cause reasons within Iowa law.

Iowa Admin. Code r. 871-24.25(21) and Iowa Admin. Code r. 871-24.25(22) provide:

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.
- (22) The claimant left because of a personality conflict with the supervisor.

In this case, the claimant stated he voluntarily quit by abandoning the truck he was driving mid-shift, by putting it "out of service." The claimant failed to provide persuasive evidence that the vehicle had become unsafe or illegal to continue operating, nor did he provide persuasive evidence that it would have been put out of service upon DOT inspection at a scale station. Rather, the claimant completed his pre-trip inspection and chose to operate the vehicle for a period of time before just stopping. The evidence presented does not support the employer asked the claimant to operate the vehicle illegally or outside of the scope of DOT rules and regulations.

Based on the evidence presented, the administrative law judge is not persuaded the employment conditions or vehicle created unsafe or intolerable working conditions. This is further supported by the claimant's offer to return to employment after quitting. Arguably, if the truck was truly unsafe to operate or could harm the claimant, he would not request to return shortly after quitting without notice.

Rather, based on the evidence presented, the administrative law judge concludes the claimant's leaving the employment may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The October 29, 2018, (reference 06) decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn