

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA BRADFORD
Claimant

APPEAL 17A-UI-00375-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

**OC: 12/18/16
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 9, 2017 (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on February 1, 2017. The claimant, Christina Bradford, participated personally. The employer, Heartland Express Inc. of Iowa, participated through witness Lea Peters.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an over the road truck driver. She began working for this employer on June 3, 2016 and her employment ended on October 22, 2016 when she voluntarily quit. Her immediate supervisor was Andy Phillips. Scott was the Georgia terminal manager.

On October 21, 2016 claimant was hauling a load and was told to take the load to Florida. Claimant was upset because she wanted to be home for the weekend. Claimant told Mr. Phillips through the truck's online computer system that she was going to turn in her keys if he could not get her home. She also advised that she was going to take the load to Georgia, not Florida. Claimant did drive the load to Georgia instead of Florida. She never spoke to Scott or Mr. Phillips again with regard to taking another load. When she reached out to the human resource department she was told that she was no longer in their system because she had not driven a load in over fifteen days.

Claimant had been speaking to both Mr. Phillips and Scott about wanting to drive a dedicated route instead of the southeast region she had been assigned to. Scott had told her that may be a possibility but she was never transferred to a dedicated route.

Claimant believed that her employment contract had substantially changed because she was driving to states that were not included in the southeast region and she was not making it home three weekends per month. Claimant's employment contract provided that she would drive the southeast region and would be home three weekends per month; however, the contract stated that home times would vary and that the employee would be required, on occasion, to run outside their region. There was continuing work available to her had she not quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). A claimant who confronts his employer and demands that he be discharged and is subsequently discharged actually quits his employment. Job insurance benefits "are not determinable by the course of semantic gymnastics." *Frances v. IDJS*, (Unpublished Iowa App 1986). 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. Iowa Department of Job Service*, (Unpublished Iowa Appeals 1984).

Claimant was upset that she was not being switched to a dedicated route. She drove a load to Georgia instead of Florida and then never returned to work. Claimant intended to voluntarily quit and carried that out by failing to return to work. Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). In this case claimant voluntarily quit because she disliked the hours she worked and believed that there was a substantial change in her contract of hire.

Iowa Admin. Code r. 871-24.25(18) 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:

(18) The claimant left because of a dislike of the shift worked.

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.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

In this case the claimant's employment contract specifically stated that she may be required to drive outside her southeast region and that her home hours may vary. As such, there was no change in her contract of hire. The claimant's voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The January 9, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/