

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID J BRUNTZ
Claimant

KANSOTA TRANSPORT INC
Employer

APPEAL 17A-UI-06909-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/18/17
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 7, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 25, 2017. The claimant participated personally. The 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. 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 an over-the-road delivery driver and was separated from employment on May 6, 2017, when he quit the employment. Continuing work was available.

The employer contracted with the US Postal Service to provide transportation services. As part of the claimant's job duties, he drove a route beginning in Sioux City and ending in Paulina, with approximately six or seven stops at post offices along the way. When the claimant was hired in early 2016, he was issued a company vehicle. The claimant worked a split shift, doing one route early morning, and returning in the afternoon for the second portion of his shift. He would complete his morning route, which began around 4:30 a.m. beginning in Sioux City, and would end in Paulina. He would then take the company vehicle home to Sioux City for several hours, where he would tend to home, rest, and attend frequent doctors' appointments related to his diabetes. He would then take the company issued vehicle and drive back to Paulina,

approximately 53 miles away, to pick up the truck he drove for his shift, and to begin the second portion of his shift around 4:00 p.m.

In mid-April 2017, the employer, by way of owner, Sam Hayson, took the claimant's vehicle away and took it back to Kansas, where he was located. The claimant no longer had a vehicle to transport himself to and from Sioux City from Paulina between his shifts each day. The claimant was informed that he would not be compensated for gas if he chose to drive his own vehicle and that he was not going to be paid for layover time between the end of his morning shift (which could be around 7:30 a.m.) until the start of his afternoon shift at 4:00 p.m. He was expected to stay in Paulina and hang out at a communal house furnished by the employer, known as the "White Inn". It contained beds for employees between shifts.

The claimant explained to the employer and his supervisor, Darlene, that he needed to be back in Sioux City during the split time because he used his time off between shifts to accomplish his home responsibilities and to also attend doctors' appointments. The employer informed the claimant that if he wanted to go to a doctor's appointment during his layover time in Sioux City, he would be required to use an entire day off without pay. The claimant did not think this was fair, because he had historically used his time off in Sioux City, between his shifts, to schedule appointments and was now either stuck in Paulina, away from his appointments or had to use his vacation time to cover a period he was not even scheduled to work. Upon receiving a reprimand on May 6, 2017 after he had a doctor's appointment, and had caught a ride back to Sioux City (by way of leaving his truck in Le Mars to pick up on the way back for his afternoon shift), he quit the employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with good cause attributable to the employer.

Iowa Code § 96.5(1) provides:

Causes for disqualification.

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.

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:

24.26(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.

The 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). 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 recently concluded that, because the intent-to-quit requirement was added to rule 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).

"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). In this case, the claimant had performed work for approximately one year, in which he would work a split shift, was issued a company vehicle to transport himself to and from his end/starting location, which was located 53 miles from his house, and permitted to spend his time between shifts at home in Sioux City, where he would schedule doctors' appointments and attend to home matters. The evidence in the record establishes a timely quit in response to substantial changes in the conditions of the employment when in April, the employer took the company issued vehicle away without reason, thereby stranding the claimant in Paulina for the day between shifts. The employer expected the claimant to remain laid over, without access to a vehicle and without pay for several hours. In addition to being stranded away from home for several hours, the claimant was informed he could no longer schedule his doctors' appointments during his off time unless he took a full day off of vacation, because the employer would not transport him back and forth home to Sioux City between his split shifts. The removal of the company issued vehicle, expectation of layover without compensation and requiring the claimant to take a full day of vacation to attend a doctor's appointment during his off time, were significant changes in the terms of hire and an intolerable work environment for the claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The July 7, 2017, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn