

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD A SHAFFER**  
Claimant

**APPEAL NO. 11A-UI-13364-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TA OPERATING LLC**  
**TRAVEL CENTERS OF AMERICA**  
Employer

**OC: 08/28/11**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed an appeal from the September 30, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on November 2, 2011. Claimant participated. Employer participated through truck service manager Steven Jensen and assistant truck service manager Nicole Brittain and was represented by Deniece Norman of Employer's Edge.

**ISSUE:**

The issue is whether claimant voluntarily left 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: Claimant was employed full-time as a mechanic and was separated from employment on August 28, 2011. He quit after his personal tools were removed from his box and others were destroyed. There was also \$80.00 cash removed from his locked tool box. He complained to immediate supervisor Brittain and truck service advisor Carrie Diamond. He and Brittain argued on Friday, August 26 about a truck not being completed at shift end and he wanted to leave it for the next technician. It was then that he complained to Brittain about the tools, cash, and drinking again and named the person in the shop that was drinking and that he suspected of the theft. There were surveillance cameras but the video was not reviewed. He did not complain to Jensen because he thought Brittain and Diamond would take appropriate action. Brittain and Diamond did not tell Jensen about claimant's concerns about missing tools or drinking on the job. Jensen was aware of claimant's concern about work assignments and work duties. Claimant had told Jensen in the spring of 2011 that he thought a senior tech was spreading rumors about him so Jensen spoke to the senior tech and there were no further complaints, in part because the claimant and the senior tech worked the issue out between themselves.

## REASONING AND CONCLUSIONS OF LAW:

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

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.

871 IAC 24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

871 IAC 24.26(2) 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:

(2) The claimant left due to unsafe working conditions.

A notice of an intent to quit had been required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 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 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Brittain's wholesale claimed lack of knowledge or recollection about the issues claimant repeatedly raised with her is incredible, especially given Diamond's knowledge about the theft of tools and cash. Although it would have behooved claimant to follow the chain of command, since Brittain was a member of management, it was her responsibility to bring the matter to Jensen's attention if she was not able to handle it for the claimant. It was an unsafe truck repair environment because others were drinking or intoxicated on the job and the employer's failure to investigate that and the thefts, when surveillance tapes were available to review, created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

**DECISION:**

The September 30, 2011 (reference 01) decision is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/pjs