

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG A PETERS

Claimant

APPEAL NO. 13A-UI-01419-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ED & FRED TRUCKING LLC

Employer

OC: 01/06/13

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the representative's decision dated January 31, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on March 7, 2013. The claimant participated personally. The employer participated by James Pullin, president, and Karen Pullin, vice president. The record consists of the testimony of James Pullin; the testimony of Karen Pullin; the testimony of Craig Peters; and Employer's Exhibits 1 and 2.

The administrative law judge did not have copies of the exhibits at the time of the hearing. They were faxed after the hearing. In reviewing the exhibits sent by the employer, only two pages were marked and received into evidence—the two-page debit card agreement. The remaining pages were administrative records of the agency and the letter of appeal.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is an interstate trucking company. The claimant was hired on May 28, 2012, as an over-the-road trucker. He was a full-time employee. His last day of work was January 5, 2013.

On January 5, 2013, the claimant came to the employer's house to drop off some paperwork. He also turned in a Visa debit card that had been given to the claimant to pay for certain charges he incurred while on the road. The claimant and the employer had a written agreement on when and how the card would be used. (Exhibits 1 and 2) The claimant was unable to get

a credit card or debit card in his own name. When the claimant used the card for an advance, the employer would not reimburse the claimant for the ATM fee. The employer paid all ATM fees associated with business related charges.

The claimant was unhappy about paying the \$2.00 ATM fee when he drew money for an advance. He decided to turn in the debit card. He told the employer that he could beg, borrow, or steal what he needed to pay expenses. The employer then asked where the truck was and the claimant said it was in Gladbrook. The employer thought the claimant had quit and went and got the truck.

The claimant called three hours later and said that he realized that he had not handled the situation correctly. The employer told him that it was too late now and that he was fired.

REASONING AND CONCLUSIONS OF LAW:

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 quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The claimant is eligible for unemployment insurance benefits. There is insufficient evidence in this record that the claimant actually quit his job. He testified that he did not intend to quit but that he was tired of paying ATM fees. The fees were the reason that he turned in the debit card. There was no testimony from the claimant or the employer that the claimant said he was quitting. The employer made the assumption that he quit because the employer did not believe that the claimant had the financial resources to pay for lumper fees, scale tickets and other expenses on the road. Later, when the claimant called to apologize for how he handled the debit card discussion, the employer told him that he was terminated. The most reasonable inference from the evidence is that the employer ended the employment relationship, not the claimant. Since the claimant did not voluntarily quit and there is insufficient evidence of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The unemployment insurance decision dated January 31, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs