

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

KEVIN S WHEELER  
418 S 19<sup>TH</sup> ST  
KEOKUK IA 52632

JCJ TRUCKING INC  
C/O G DEFOE AND P DEFOE  
PO BOX 1048  
LASALLE IL 61301

Appeal Number: 05A-UI-07012-DWT  
OC: 05/29/05 R: 04  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Kevin S. Wheeler (claimant) appealed a representative's July 5, 2005 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of JCJ Trucking, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 26, 2005. The claimant participated in the hearing with his witness, Jeannie Meganhan. Cathy Billig appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer's business on March 9, 2004. The claimant worked full-time as an over-the-road-truck driver. Vermillion Brothers hired the claimant, but the employer took over this business in September 2004. When the claimant's old dispatcher was replaced, the claimant came to the conclusion that the employer did not assign him as many miles as he had driven when Vermillion Brothers operated the business. The claimant noticed that his gross weekly wages decreased.

When the claimant worked for Vermillion Brothers he earned a gross salary of approximately \$1,000.00 per week. In January 2005 the claimant received wages of \$2,994.00; in February the claimant received wages of \$2,379.10; in March the claimant did not receive any wages because he was injured and unable to work; and in April the claimant received wages totaling \$2,574.00.

Initially, when the claimant's gross wages decreased, he agreed to take assignments that paid less with the promise that he would be assigned more miles. In January 2005, the claimant agreed to take assignments that paid 27-cents a mile. While the number of miles he drove increased, the increase in miles was not enough to increase his gross take-home pay. In late January or early February the claimant told the employer he would have to quit in two weeks because he was not making enough money anymore.

The claimant then injured his shoulder while working and was unable to work in March. When the claimant was released to return to work, he went back to work for the employer hoping his wages would again equal about \$1,000.00 a week. Even though the claimant received 30 to 33-cents a mile for the loads he took in April, he still did not earn enough money to meet his financial needs. The claimant quit on April 25, 2005. The claimant did not tell the employer why he quit that day.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant quit his employment on April 25, 2005. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quits employment with good cause when he quits because of a substantial change in the employment relationship. 871 IAC 24.26(1). The facts reveal the claimant earned about \$1,000.00 per week before the employer took over the business. After the employer took over, the claimant earned an average of \$600.00 to \$866.00 per week. This amounts to a 14 to 40 percent reduction in gross wages per week.

In Wiese v. Iowa Department of Job Service, 389 N.W.2d 676 (Iowa 1986), the Iowa Supreme Court stated: "We believe that a good faith effort by an employer to continue to provide employment for his employees may be considered in examining whether contract changes are

substantial and whether such changes are the cause of an employee quit attributable to the employer.”

In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in hours was, as a matter of law, a substantial change in the contract of hire. Further, while citing Wiese with approval, the Court stated that:

It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer.... [G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith.

(Id. at 702.) Dehmel the more recent case is directly on point with this case. While the pay reduction may have been due to circumstances beyond the employer’s control, under the reasoning of Dehmel, is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer.

The next issue is whether a 14 to 40 percent pay reduction is a substantial change in the contract of hire. The Court in Dehmel concluded a 25 percent to 35 percent pay reduction was substantial as a matter of law, citing cases from other jurisdictions that had held reductions ranging from 15 percent to 26 percent were substantial. Id. at 703. Based on the reasoning in Dehmel, the claimant established that his reduction in pay was substantial. The claimant had good cause to leave employment.

DECISION:

The representative’s July 5, 2005 decision (reference 02) is reversed. The claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of May 29, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer’s account may be charged for benefits paid to the claimant.

dlw/kjf