

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS D CHINBERG
Claimant

APPEAL NO. 09A-UI-16153-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

JIM COONS TRUCKING INC
Employer

**Original Claim: 10/14/09
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 14, 2009, reference 02, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 1, 2009. The claimant participated. The employer participated by Jim Coons, owner. The employer was represented by Jeffrey Bump, attorney at law. The record consists of the testimony of Dennis Chinberg and the testimony of Jim Coons.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case provides dump trucks and drivers for customers engaged primarily in the construction business. The work is somewhat seasonal, but work is available in the winter, such as hauling snow. The claimant drove a dump truck for the employer for approximately nine years.

The claimant's last day of actual work was August 25, 2009. He filed a claim for unemployment benefits on September 6, 2009. What occurred in the interim is disputed between the parties. The claimant said he would call Ed Gray, a fellow employee, every morning to find out if something was going on and he was informed that nothing was going on. He did not call the owner, Jeff Coons. Ed Gray was not a supervisor. Mr. Coons tried to get in touch with the claimant and always reached voice mail. The claimant did not return his calls.

Mr. Coons concluded that the claimant quit when he received the notice that the claimant had filed for unemployment benefits. Work was available for the claimant during the preceding week and thereafter. On October 9, 2009, Mr. Coons and the claimant had a face-to-face meeting, at which time the claimant turned in his keys and Mr. Coons returned a pickup that the claimant had left at the shop.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

There was a decided lack of credible evidence in this case, as neither witness could be specific on dates and their testimony was contradictory and inconsistent. What appears to have occurred is that the claimant was dissatisfied over the number of hours he was working per week and, in particular, his last paycheck, which was only for 14 hours of work. He checked with a co-employee, not the owner, on whether there was work available. That co-employee did not always have accurate information on the work that was available. Exactly how many times the claimant called this co-employee and how many times the owner tried to get in touch with the claimant about work cannot be determined with any precision. The claimant did stop asking about work after he filed his claim for unemployment benefits, which was on September 6, 2009.

After carefully considering all of the evidence in this case, the administrative law judge concludes that it was the claimant that initiated the separation of employment. He never called the owner to ask about work and admitted that he did not return one phone call that he did receive. The claimant may have been dissatisfied over the hours he was receiving. Again, there was little credible evidence on which to base a finding that there had been a substantial change in the contract of hire or whether the claimant was partially unemployed. Benefits are therefore denied.

DECISION:

The representative's decision dated October 14, 2009, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw