

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**STEPHEN LIVERNOIS**  
Claimant

**THE TERMINIX INTERNATIONAL CO LP**  
Employer

**APPEAL NO. 21A-UI-23038-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/29/21  
Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant, Stephen Livernois, filed a timely appeal from the October 7, 2021, reference 01, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that claimant voluntarily quit on August 23, 2021 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 8, 2021. The claimant participated. Ricky Jones represented the employer.

**ISSUE:**

Whether the claimant's voluntary quit was for 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 by The Terminix International Company, L.P. as a full-time Outside Sales Professional from July 2019 until August 23, 2021, when the claimant voluntarily quit. The claimant's compensation at the start of the employment included a base salary and commission. At the start of the employment, the employer's installation staff would generally install the services the claimant sold within two weeks of the sale. The claimant would receive his commission the following month. As of May or June 2021, the claimant's compensation was 100 percent commission based. The claimant knew at the start of the employment that this transition to commission-only compensation would occur. Over the course of the employment, more than half of the employer's 13 installation staff separated from the employer due to management issues. As a result of the installation technician exodus, the claimant could no longer service the accounts he sold to within a reasonable period. The claimant would made sales, but then the installation would not occurred for two months or more. This resulted in ongoing substantial delays in the claimant being paid for the work he performed for the employer, since the claimant would not receive his commission until the month following installation. The claimant brought these concerns and others to the employer's attention prior to submitting his resignation and separating from the employer on August 23, 2021.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

Iowa Administrative Code rule 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.

"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). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record establishes a voluntary quit based on substantial changes in the conditions of the employment that also constituted intolerable and detrimental working conditions. The substantial changes included the significantly delayed payment for services rendered brought about the exodus of more than half of the employer's installation technicians. The claimant reasonably expected to be paid for his sales services in a timely manner. The employer's failure to maintain proper staffing and its impact on the claimant's compensation

created intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment. Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The October 7, 2021, reference 01, decision is reversed. The claimant voluntary quit the employment on August 23, 2021 with good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

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James E. Timberland  
Administrative Law Judge

January 19, 2022  
Decision Dated and Mailed

jet/mh