

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGEL M WADE**

Claimant

**APPEAL NO. 11A-UI-10787-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES OF IOWA**

Employer

**OC: 07/17/11**

**Claimant: Appellant (2)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Angel Wade filed a timely appeal from the August 10, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 8, 2011. Ms. Wade participated. Rochelle Jordan, human resources generalist, represented the employer and presented additional testimony through Sarah Wheeler, acting operations manager.

**ISSUE:**

Whether Ms. Wade separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Angel; Wade was employed by APAC Customer Services of Iowa as a part-time customer service representative from 2009 until July 18, 2011. Prior to July 11, 2011, Ms. Wade's work hours had been 9:30 a.m. to 3:00 p.m., Tuesday through Friday, and 9:00 a.m. to noon on Saturday. Ms. Wade had these hours for more than two years. On July 4 or 5, the employer notified Ms. Wade that her work hours effective July 11 would be full-time and would be 2:15 p.m. to 10:45 p.m. Ms. Wade has a two-year-old son. Ms. Wade attends school at 3:45 p.m. When the employer notified Ms. Wade of the change in work hours, Ms. Wade notified the employer that she could not work the new hours because of her parenting duties and because she attended school. The employer did not change the proposed work hours. Ms. Wade was then absent without notifying the employer on July 11, 12, 14, 16, and 17, 2011. The employer's attendance policy required that Ms. Wade notify the employer before her shift each day she needed to be absent. Ms. Wade was aware of the requirement. Ms. Wade had been trying unsuccessfully to arrange child care for the later work hours.

Ms. Wade reappeared at the workplace on July 18, clocked in, and then went to discuss her work hours. When the employer asked Ms. Wade where she had been during the prior five shifts, Ms. Wade told the employer had been trying to locate childcare. The employer asserted that Ms. Wade had abandoned the employment and then asked her to sign a resignation letter.

When Ms. Wade refused to sign the resignation, the employer advised her that the employment was ended.

The employer had assigned Ms. Wade the new work hours as part of a bidding process. The employer arranged the bidding order so that Ms. Wade was one of the last people to pick work hours. The employer then did not honor any of Ms. Wade's hours requests. Instead, the employer assigned the new work hours.

### **REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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.

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.

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.

A worker who is absent three days without notifying the employer in violation of the employer's policy is *presumed* to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4). However, that presumption can be overcome, in whole or in part, if the weight of the evidence establishes either a discharge or a voluntary quit for good cause.

871 IAC 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:

- (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 employer reasonably concluded that Ms. Wade had voluntarily quit the employment after she had failed to appear for work or notify the employer for five consecutive shifts. However, the weight of the evidence indicates another important factor in Ms. Wade’s separation from the employment. That important factor was the employer’s decision to change Ms. Wade’s work hours from the 9:30 a.m.-to-3:00 p.m. shift to the 12:15 p.m.-to-10:45 p.m. shift. That change impacted both Ms. Wade’s child care arrangement and her academic studies. A reasonable person would expect it to be more difficult to find child care for the late evening than it would be to find child care for earlier in the day. The employer substantially changed the conditions of the employment in a way that was detrimental to Ms. Wade. This was the basis for Ms. Wade’s non-appearance on July 11 through 17.

Ms. Wade voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Wade is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits paid to Ms. Wade.

**DECISION:**

The Agency representative’s August 10, 2011, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw