

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BENJAMIN KLINE
Claimant

PINNACLE RESTAURANTS INC
Employer

APPEAL NO: 20A-UI-15605-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Benjamin Kline, filed a timely appeal from the November 5, 2020, reference 01, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on August 16, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 26, 2021. The claimant participated and presented additional testimony through Jacob Maish. Keven Smith represented the employer. Exhibits 1, 2, A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records:

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: Pinnacle Restaurants, Inc. owns and operates eight Subway restaurants in the Iowa City, Coralville, North Liberty area and another in Williamsburg. The claimant began his employment in 2016 as a regular crew member. The claimant was promoted to full-time manager of the employer's South Riverside Drive Iowa City restaurant in late 2019 and continued in that position until August 16, 2020, when he voluntarily quit. On August 12, 2020, the employee scheduled to open the South Riverside Subway did not appear for work and did not open the restaurant at 9:00 a.m. as required. The incident occurred two days after the August 10, 2020 derecho. The claimant was off work at the time and was without cell phone service due to the derecho. The claimant learned about the subordinate's failure to appear when a Team Leader assigned to the South Riverside Subway called the claimant's roommate's cell phone. The claimant and his roommate had different cell phone providers. As soon as the claimant learned the subordinate failed to open the restaurant on time, the claimant rushed to the restaurant. The employer had assigned a manager in training to open the restaurant. The employer had that morning appointed the manager in training as the new manager of the South Riverside Drive Subway. The employer decided to offer the claimant the option of being demoted to assistant manager at the South Riverside location or transferring to a North Liberty Subway to take over as manager

of the North Liberty location. If the claimant chose to stay at the South Riverside Drive location, the demotion to assistant manager would come with a reduction in pay from \$17.00 per hour to \$12.00 per. If the claimant chose to transfer to the North Liberty location, the claimant would retain the same pay, but would have a longer commute, 18 minutes, rather than the five-minute commute to the South Riverside Drive store. The claimant learned about the changes the employer was making to his employment when he met with the employer on August 12, 2020. The claimant elected not to acquiesce in either proposed change and subsequently notified the employer that he was separating from the employment instead. In rejecting the demotion at the South Riverside Drive location, the claimant considered the prospect of working under a manager he had trained. In rejecting the transfer to the North Liberty location, the claimant considered not only the increased commute, but also point of sale equipment issues he thought would make it more difficult to operate the North Liberty location. The employer is headquartered in North Liberty and wanted the claimant close by so that the employer could better monitor the claimant's work and address issues. The employer had been through five managers at the South Riverside Drive location in as many years. The employer's plan to move the claimant to the North Liberty location was to also include removing the North Liberty manager from his or her position. The employer generally only moved managers from one location to another if the manager requested the move.

In making the decision to remove the claimant from the manager position at the South Riverside Drive location, the employer considered a June 25, 2020 reprimand the employer issued to the claimant regarding multiple deficiencies at the South Riverside Drive location, including food safety issues, food and labor cost issues, staffing issues, and general disorganization. The claimant attributed the staffing issue to be attributable to the comparatively low starting wage offered by the employer. The employer also considered a July 2020 Subway Corporation audit of restaurant operations at the South Riverside Drive location that identified multiple food safety violations and cleanliness issues. However, the employer never addressed the July audit with the claimant.

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.

Iowa Admin. Code r. 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:

(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 voluntarily quit for good cause attributable to the employer. The claimant voluntarily quit the employment rather than acquiesce in substantial changes in the condition of the employment. The substantial changes included the proposed demotion and substantial pay decrease if the claimant remained at the South Riverside Drive location or a substantial increase in the commuting distance if the claimant moved to the North Liberty location. While the employer had legitimate concerns about operations at the South Riverside Drive location, the final incident that prompted the employer to remove the claimant from his position, the subordinate's failure to report for work, cannot be attributed to the claimant. As soon as the claimant learned of the issue, the claimant immediately reported for work with the intent to resolve the issue. By that time the employer had already made its decision to change the conditions of the claimant's employment. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The November 5, 2020, reference 01, decision is reversed. The claimant voluntary quit on August 16, 2020 with good cause attributable to the employer. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

February 18, 2021
Decision Dated and Mailed

jet/mh