

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRIAN L WICKHAM
Claimant

MIRAGE PROPERTIES CORPORATION
Employer

APPEAL NO. 21A-UI-07101-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/29/20
Claimant: Respondent (3)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 2, 2021, reference 01, decision that allowed benefits to the claimant effective December 6, 2020, provided the claimant was otherwise eligible, but that denied benefits for the period of November 22, 2020 through December 5, 2020, based on the deputy's conclusion that the claimant voluntarily quit after being notified of an impending layoff. After due notice was issued, a hearing was held on May 18, 2021. The claimant participated. Barry Smith represented the employer. Exhibit 1, the appeal letter was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, and the fact-finding interview SIR/cover sheet.

ISSUES:

Whether the claimant voluntary quit without good cause attributable to the employer.
Whether the claimant was laid off and quit in advance of scheduled layoff.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time lead maintenance technician/supervisor from 2018 until November 11, 2020, when he voluntarily quit in response to being demoted from his lead/supervisory status. The claimant led a team of three to five maintenance technicians to perform sundry maintenance and repair task at the employer 300-plus unit apartment complex. The claimant's core hours were Monday through Friday, 8:00 a.m. to 4:30 p.m. The claimant was also on-call a week at a time. The claimant's final wages was \$19.50 an hour. Amber Taylor, Property Manager, was the claimant's supervisor. The employer acknowledges that the claimant was skilled worker who performed quality work on behalf of the employer.

On November 11, 2020, Ms. Taylor notified the claimant that the employer had hired another employee as maintenance supervisor. The employer hired the new employee as a Maintenance Tech II, whereas the claimant was a Maintenance Tech I. Under the employer's organizational hierarchy, a Maintenance Tech I was at a higher level than a Maintenance Tech II. The employer's plan was to remove the claimant from his lead/supervisory duties and subordinate him to a new, lower skilled and much younger employee. The claimant is 58 years

old. The new employee was in his thirties. The announcement occurred about a month after the claimant expressed dissatisfaction with his wage. The employer did not reference any impact on the claimant's pay or work hours. The change was to be effective immediately. At the time of the employer's announcement, the claimant notified Ms. Taylor that he was quitting the employment. The claimant did not return to the employment after November 11, 2020.

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).

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded 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).

The weight of the evidence in the record establishes a November 11, 2020 voluntary quit with good cause attributable to the employer and in response to a substantial change in the conditions of the employment. The evidence establishes that the claimant had functioned as the maintenance supervisor for more than two years when the employer notified him that he was being removed from those supervisory duties and would be subordinated to a much younger, less skilled, and ostensibly lower status employee. No reasonable person would expect the claimant to perceive the change as anything other than a demoralizing demotion. A reasonable person in the claimant's position might conclude that there was an element of age discrimination at play, as well as an element of retaliation in response to the claimant expressing dissatisfaction with his wages. The claimant reasonably concluded the planned change in the conditions of his employment was a substantial change and elected to promptly separate from the employment, rather than acquiesce in the changed conditions. The claimant is eligible for benefits effective November 29, 2020, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The March 2, 2021, reference 01, decision is modified adverse to the employer/appellant as follows. The claimant voluntarily quit the employment on November 11, 2020 for good cause attributable to the employer. The claimant is eligible for benefits effective November 29, 2020, the effective date of his claim, provided the claimant is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.



James E. Timberland
Administrative Law Judge

May 25, 2021
Decision Dated and Mailed

jet/kmj