IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DARRELL L BLANFORD
Claimant

SEARS ROEBUCK & CO
Employer

APPEAL NO. 09A-UI-05824-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/22/09
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 2, 2009, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on May 11, 2009. Claimant Darrell Blanford participated. Jennifer Carlson, Human Resources Manager, represented the employer and presented additional testimony through Grant Garbe, Home Improvement Manager.

ISSUE:

Whether Mr. Blanford'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: Darrell Blanford was employed by the Sioux City Sears as a part-time Sales Associate in the Home Improvement Department from October 19, 2007 until February 26, 2009, when he voluntarily quit. Mr. Blanford averaged 20-25 hours per week. Grant Garbe, Home Improvement Manager, became Mr. Blanford's immediate supervisor in January 2008.

Mr. Blanford's sales duties included the marketing of extended warranties or "protection agreements" to customers purchasing an item that qualified for the add-on product. Mr. Blanford's sales figures for protection agreements were considerably lower than other sales associates who worked similar hours in the same area. Mr. Blanford thought it appropriate to offer the protection agreement to the customer once when reviewing the product with the customer on the sales floor and a second time when ringing up the sale on the cash register at the cash register. Mr. Blanford did not think it appropriate to push further than that to market the protection agreement. Mr. Blanford was not consistent in taking those limited steps to market the protection agreement. Mr. Blanford's approach to marketing the protection agreements was not in keeping with Sears' guidelines for marketing the protection agreements.

On February 21, 2009, Mr. Garbe spoke to Mr. Blanford about the need to better market protection agreements. During the conversation, Mr. Blanford cited his belief that the protection agreements were of no benefit to customers and represented only a bonus for supervisors as

the bases for refusing to do more to market the product. Mr. Blanford had not previously refused to market any other product or and had not otherwise refused an employer directive.

On February 21, Mr. Garbe decided that Mr. Blanford should undergo retraining on the guidelines for marketing the protection agreements as a precursor to possible disciplinary action. Mr. Garbe had undergone the usual 1.5 to two hours of training on marketing the protection agreements at the beginning of the employment. The retraining would cover the same material. On February 21, Mr. Garbe removed Mr. Blanford from the sales floor and had Mr. Blanford participate in retraining on for the balance of his shift. Mr. Blanford made less money when he was off the sales floor. On the sales floor, Mr. Blanford averaged approximately $13.00 per hour. This included his $6.00 base wage plus commission. While in training, Mr. Willingham received $8.00 per hour.

For the week of February 22 through 28, Mr. Garbe decreased Mr. Blanford's scheduled work hours to 15. On February 26, Mr. Garbe notified Mr. Blanford that he would again spend his shift off the sales floor in retraining concerning the protection agreements. Mr. Garbe had posted the schedule for the first week of March and had not give Mr. Blanford any hours on that schedule. When Mr. Blanford inquired why he had no hours, Mr. Garbe notified him that he would be in training that week as well. Mr. Garbe was in fact using the retraining and elimination of sales floor hours as punishment for Mr. Blanford's undiplomatic comment on February 21. When Mr. Blanford learned that he was being removed from the sales floor for indefinite retraining, he notified Mr. Garbe and Human Resources Manager Jennifer Carlson that he was refusing the additional retraining and was quitting the employment. Mr. Blanford provided his employee badge and discount card to Ms. Carlson and left the employment.

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.

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.

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 greater weight of the evidence indicates that Mr. Blanford voluntarily quit the employment in timely response to significant changes in the conditions of his employment. The changes included a significant reduction in pay when Mr. Blanford was off the sales floor and in retraining. The changes included the initial reduction in sales floor hours and then the complete loss of scheduled hours for the immediate and indefinite future. It is the impact on Mr. Blanford, not the employer's motivation, that the administrative law judge must consider in determining whether the voluntary quit was for good cause attributable to the employer. It was. Accordingly, Mr. Blanford is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Blanford.

DECISION:

The Agency representative's April 2, 2009, reference 02, decision is affirmed. The claimant voluntarily quit the employment for 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 paid to the claimant.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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