

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB A HENDREN
Claimant

APPEAL NO. 16A-UI-08667-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REFRACTORY & INSULATION SUPPLY INC
Employer

OC: 06/12/16
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jacob Hendren filed a timely appeal from the July 1, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Mr. Hendren had voluntarily quit on June 16, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 26, 2016. Mr. Hendren participated. Dustin Strehlo 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: Jacob Hendren was employed Refractory & Insulation Supply, Inc. as a full-time fabricator/welder from August 2015 until June 16, 2016, when he voluntarily quit in response to a change in the employer's cell phone policy. Mr. Hendren's usual work hours were 6:00 a.m. to 2:00 p.m., Monday through Friday. Mr. Hendren sometimes worked four 10-hour shifts per week to meet the employer's business needs. Mr. Hendren's immediate supervisor was Hartwell "Corey" Steele, Shop Foreman. Toward the end of the Mr. Hendren's employment, Dustin Strehlo, became a shop foreman and assisted in supervising Mr. Hendren's work.

On June 16, 2016, Mr. Steele announced at the morning meeting that employee cell phones would no longer be allowed in the production area and had to be kept in employees' lockers or employees' car. The employer viewed the change in policy to be necessary for productivity and safety reasons. The employer enacted the policy in response to cell phone use by employees other than Mr. Hendren. Mr. Hendren was upset by the change in policy. Mr. Hendren would use his cell phone to communicate with Mr. Steele, who was often away from the employer's production facility. Mr. Hendren also viewed his cell phone as a safety tool. Mr. Hendren also wanted to have his cell phone available for the purpose of communicating with family members. The employer had work telephones located in the employer's building. Mr. Strehlo was usually working in the employer's building. If Mr. Hendren needed to communicate with Mr. Steele while Mr. Steele was off-site, Mr. Strehlo was available to facilitate such communication.

At the same time Mr. Hendren voiced his displeasure with the new cell phone policy, he also voiced concerns about workplace safety. One co-worker in particular had engaged in unsafe practices on multiple occasions. Mr. Hendren believed that the employer's response to workplace safety issues had been inadequate. The employer had not been apprised of all the incidents that factored in Mr. Hendren's safety concerns. The most recent had taken place a week or two before Mr. Hendren left the employment.

At the same time Mr. Hendren voiced his displeasure with the new cell phone policy, he also elected to engage in a personal verbal attack on Mr. Steele's value as a supervisor and employee.

At the time Mr. Hendren voiced his concerns, Mr. Steele told Mr. Hendren that if Mr. Hendren was unhappy, Mr. Steele was not forcing Mr. Hendren to stay. Mr. Hendren elected to quit on the spot. Mr. Hendren gathered his personal tools and asked Mr. Steele and Mr. Strehlo to sign acknowledgment that Mr. Hendren had removed his personal tools and the specific tools removed. Mr. Hendren was displeased when both men declined to sign the acknowledgement. Mr. Hendren then left the workplace and did not return. At the time, Mr. Hendren separated from the employment, the employer continued to have work available for him.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 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).

The weight of the evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. While the cell phone policy change was a change in the conditions of the employment, it did not rise to the level of a substantial change in the conditions of the employment. It was not unreasonable for the employer to require employees to keep cell phones in their lockers or in their cars to ensure that employees were attending to their work duties. The employer did not prohibit personal cell phone use on breaks. Business phones were available for business use and for use in emergency family situations. Mr. Strehlo was regularly in the workplace and was available to facilitate communication between Mr. Hendren and Mr. Steele. Not being allowed to keep a personal cell phone on hand throughout the workday did not expose Mr. Hendren to any increased risk in the workplace. While Mr. Hendren had legitimate concerns about workplace safety and about specific incidents involving unsafe acts, the weight of the evidence indicates that these concerns were neither the trigger nor the basis for Mr. Hendren's decision to leave the employment. Accordingly, the evidence does not support a conclusion that Mr. Hendren quit in response to intolerable or detrimental working conditions.

Because the evidence established a voluntarily quit without good cause attributable to the employer, Mr. Hendren is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Hendren must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The July 1, 2016, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs