

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA R TURNER
Claimant

APPEAL NO. 13A-UI-11829-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXIDE TECHNOLOGIES
Employer

OC: 09/08/13
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Debra Turner filed a timely appeal from the October 10, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 14, 2013. Ms. Turner participated. Tim Guyer represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-11830-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

Whether Ms. Turner'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: Debra Turner was employed by Exide Technologies from March 6, 2013 until July 16, 2013 when she voluntarily quit due to a change in her work schedule from second shift evening hours to an overnight shift. Ms. Turner was hired as a material handler/forklift operator on the second shift, 2:45 p.m. to 10:00 p.m.

About a week into the employment, Ms. Turner told the employer that the fork lift operator duties were not a good fit and that she no longer wanted to perform those duties. About that time, the employer was lacking a janitorial employee because an employee had commenced a sick leave. The employer offered Ms. Turner the janitorial position on a short-term basis until the regular worker returned. Ms. Turner accepted the janitorial position with the understanding that the particular position would no longer be available once the regular worker returned from her leave. The hours were roughly the same as the fork lift operator hours and the pay remained the same for Ms. Turner.

The janitorial position became unavailable to Ms. Turner a few weeks before Ms. Turner quit the employment. At that point, the employer spoke to Ms. Turner about becoming an assembly line worker on the third shift, 10:45 p.m. to 6:00 a.m. The hourly base pay would remain the same but there would be a slight change in pay due to the shift differential. Ms. Turner told the employer that she could not work overnight hours. The employer then placed Ms. Turner on the

second shift assembly line. The hours remained the as before 2:45 p.m. to 10:00 p.m. The wage remained the same as before. Ms. Turner found the second shift assembly line position to her liking and worked in that position for two to three weeks.

On the morning of Monday, July 15, 2013, Ms. Turner was getting ready to report to work at 11:00 a.m. to fill in for an absent first-shift employee. That morning, Ms. Turner received a telephone call from the employer. The employer representative advised Ms. Turner that she had been transferred to the third shift and in fact has just missed her first shift, which was supposed to be the night before. Ms. Turner had no idea she had been expected to report for work on the third shift. Ms. Turner decided to call in an absence that day and attribute it to the heat. The next day, Ms. Turner went to the workplace and resigned from the employment based on that surprise transfer to the third shift.

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 evidence indicates that the voluntary quit was prompted by a sudden change in the assigned work shift, from 2:45 p.m. – 10:00 p.m. to 10:45 p.m. to 6:00 a.m. Despite the change in duties, Ms. Turner had consistently worked the second shift hours from the start of her employment. The change to third shift hours represented a substantial change in the conditions of the employment. Due to the substantial change in the working conditions, Ms. Turner's voluntary quit was for good cause attributable to the employer. Accordingly, Ms. Turner is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Turner.

DECISION:

The agency representatives October 10, 2013, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css