

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRIS J COMER
Claimant

APPEAL NO. 18A-UI-11628-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLEETSIDE FORD LLC
Employer

OC: 11/04/18
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Chris Comer filed a timely appeal from the November 28, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Comer voluntarily quit on September 14, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 18, 2018. Mr. Comer participated. Terry Wojtowicz represented the employer and presented additional testimony through Michael Evink.

ISSUE:

Whether Mr. Comer'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: Chris Comer was employed by Fleetside Ford, L.L.C., as a full-time auto technician from September 2017 until September 14, 2018, when he voluntarily quit the employment. Derek Dredge, Shop Supervisor, was Mr. Comer's immediate supervisor. Terry Wojtowicz is President and owner of Fleetside Ford, L.L.C. On September 14, 2018, Mr. Comer had been working on a vehicle repair project and was waiting for parts he needed to complete the project when Mr. Dredge directed Mr. Comer to wash some vehicles. Mr. Wojtowicz had noticed Mr. Comer not performing work and directed Mr. Dredge to assign the car washing duties to Mr. Comer. At the time the employer assigned Mr. Comer to wash vehicles, neither Mr. Comer nor the employer knew how long it would take for the vendor to deliver the parts Mr. Comer needed to complete the auto repair project. The customer whose vehicle Mr. Comer had been repairing had dropped the vehicle off and was not waiting at the dealership for the vehicle. Mr. Comer usually washed vehicles for the employer about once per week. Mr. Comer ended up washing autos for an hour or two before he was able to return to the auto repair project. The auto repair project and the car washing duties provided the same pay to Mr. Comer. Though Mr. Comer was scheduled to work until 5:00 p.m., he elected to leave at 4:00 p.m. Mr. Comer did not return to the employment. Mr. Comer had not accepted other employment at the time of the quit.

Mr. Comer factored earlier experiences in his decision to leave the employment. About a week before Mr. Comer quit, Mr. Comer had been in Mr. Dredge's office completing a narrative to document a vehicle repair. Mr. Wojtowicz concluded that Mr. Comer was loafing and had Mr. Dredge direct Mr. Comer to return to his other duties. In Spring 2018, Mr. Wojtowicz observed Mr. Comer on his cell phone and directed Mr. Dredge to tell Mr. Comer to get busy. Mr. Comer became incensed and went to confront Mr. Wojtowicz. Mr. Comer told Mr. Wojtowicz to speak with him directly if he had an issue, rather than go through a supervisor. In September 2017, Mr. Comer witnessed Mr. Wojtowicz punch a hole in a door at a time when Mr. Wojtowicz was angry about an employee losing the key to a customer's vehicle. Mr. Comer was unhappy that his wage had not increased during the employment.

REASONING AND CONCLUSIONS OF LAW:

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 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.

Iowa Admin. Code r. 871-24.25(13) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

Iowa Admin. Code r. 871-24.25(21) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The

following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(22) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(22) The claimant left because of a personality conflict with the supervisor.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Administrative Code rule 871-24.26(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 213 (Iowa 2005).

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 voluntary quit without good cause attributable to the employer. The employer's directive that Mr. Comer wash vehicles for a portion of his work day on September 14, 2018 was neither a change in the conditions of the employment nor an

intolerable and/or detrimental working condition. The employer observed Mr. Comer not performing work, discerned that Mr. Comer was waiting for parts, and reasonably directed Mr. Comer to keep busy by performing the auto washing duties. The employer's earlier directives that Mr. Comer keep busy while he was on the clock also did not create intolerable and/or detrimental working conditions. The door punching incident occurred very early in the employment and was not a significant factor in the quit decision. Mr. Comer knew his wages at the start of the employment and effectively acquiesced in those wages by remaining in the employment as long as he did after not receiving the boost in pay he had hoped for. Mr. Comer's decision to leave the employment comes down to his dislike with the work environment and dislike of Mr. Wojtowicz.

Because the evidence establishes a voluntarily quit without good cause attributable to the employer, Mr. Comer is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Comer must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The November 28, 2018, reference 01, decision is affirmed. The claimant voluntarily quit the employment on September 14, 2018 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 10 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/rvs