

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN T DRISCOLL**  
Claimant

**APPEAL NO. 08A-UI-05132-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KENNEDY INVESTMENTS INC  
VINE TAVERN**  
Employer

**OC: 09/09/07 R: 03  
Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Brian Driscoll filed a timely appeal from the May 23, 2008, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on June 11, 2008. Mr. Driscoll participated. Danny Lake, General Manager, 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: Brian Driscoll was employed by Kennedy Investments, Inc., doing business as Vine Tavern, on a full-time basis from January 7, 2008 until May 1, 2008, when he voluntarily quit. Mr. Driscoll had been hired by Kitty Lake, Regional Manager and owner, to work as the general manager of the employer's bar/restaurant on Prentiss Road in Iowa City. Ms. Lake was initially mentoring Mr. Driscoll on a daily basis. During February and March, Ms. Lake was out of the state and Mr. Driscoll functioned as general manager. When Ms. Lake returned to Iowa, she was then in the Prentiss Road Vine Tavern a couple days per week and Mr. Driscoll continued to function as general manager.

Toward the end of April 2008, Mr. Driscoll began to hear rumors from professional contacts that Ms. Lake's son, Danny Lake, was returning to the Iowa City area and would be returning to work at the Prentiss Road Vine Tavern. Mr. Lake had previously been the general manager of the Prentiss Road Vine Tavern. In response to hearing the rumors, Mr. Driscoll contacted Kitty Lake and asked whether it was true that Danny Lake would be returning to run the Prentiss Road Vine Tavern. Ms. Lake told Mr. Driscoll that she did not know what her son's plans were.

On or about April 28, Kitty Lake and Mr. Driscoll participated in a telephone call to discuss changes in the management of the Prentiss Road Vine Tavern. Danny Lake was not on the call, but was with Kitty Lake at the time of the call. Ms. Lake told Mr. Driscoll that Danny Lake

would be returning to manage the Prentiss Road Vine Tavern with Mr. Driscoll. Mr. Driscoll asked Ms. Lake whether he was still the general manager. Ms. Lake deflected the question by saying that titles were not important, but that Mr. Lake and Mr. Driscoll would be managing the bar/restaurant together, with the assistance of the kitchen manager. As part of the change in management staff, the employer planned to reduce the use of other "Managers on Duty."

In connection with this call and other events, Mr. Driscoll concluded he had been demoted. When Mr. Driscoll and Mr. Lake sat down to prepare the schedule for the coming week, Mr. Lake told Mr. Driscoll that Mr. Driscoll needed to work more evening hours. Mr. Driscoll had a previous understanding with Kitty Lake that he would work limited evening hours. Prior to Mr. Lake's return, Mr. Driscoll had consistently worked day hours except for a Thursday closing shift. On the new schedule, Mr. Driscoll would be working an additional closing shift and would be working two hours later on two additional days. On April 28, a bartender called in an absence. Such calls would previously have been handled by Mr. Driscoll. Mr. Lake took the call and later informed Mr. Driscoll of the call. Based on Mr. Lake's prior experience as general manager and Mr. Driscoll's relatively short association with the business, it was clear to Mr. Lake that he had been relegated to a management position that was junior to Mr. Lake. After Mr. Driscoll separated from the employment, Danny Lake did in fact resume his prior position as general manager of the Prentiss Road Vine Tavern.

#### **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).

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 greater weight of the evidence in the record does in fact establish substantial changes in the conditions of Mr. Driscoll's established conditions of employment. The evidence indicates that the employer did in fact demote Mr. Driscoll from general manager to a junior management position in connection with Danny Lake's return to the business. The evidence indicates that Danny Lake commenced functioning as the de facto general manager as soon as he returned to work in the restaurant. This was indicated by a number of things that included Mr. Lake's decision that Mr. Driscoll's hours of employment would change. A reasonable person in Mr. Driscoll's position would have concluded that he or she had been demoted to make room for Mr. Lake's return as general manager.

Mr. Driscoll voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Driscoll is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Driscoll.

**DECISION:**

The Agency representative's May 23, 2008, reference 03, decision is reversed. 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

jet/css