

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CURTIS A LIVINGSTON

Claimant

APPEAL NO. 08A-UI-00430-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WILSONS LEATHER OF IOWA INC
WILSONS THE LEATHER EXPERTS INC**
Employer

**OC: 11/25/07 R: 02
Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Wilson's Leather of Iowa, Inc./Wilson's the Leather Experts, Inc., filed a timely appeal from the January 4, 2008, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on January 29, 2008. The claimant did not participate. The claimant provided a telephone number for the hearing, but was not available at that number at the time of the hearing. Raul Ybanez of TALX UC eXpress represented the employer and presented testimony through Anna Neff, Store Manager. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

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: Curtis Livingston was employed by Wilson's Leather of Iowa/Wilson's the Leather Experts from October 24, 2006 until November 3, 2007, when he voluntarily quit. Store Manager Anna Neff was Mr. Livingston's immediate supervisor throughout the employment. Mr. Livingston started the employment as a part-time sales associate and received 10-15 hours per week while in that position. On November 19, 2006, Ms. Neff promoted Mr. Livingston to a "temporary" manager trainee position and Mr. Livingston received 32-40 hours per week while in that position. Mr. Livingston continued in the manager trainee position until Ms. Neff demoted him on October 14, 2007. Mr. Livingston was demoted to a part-time field sales position and his hours were reduced to 15 hours per week. The employer based the demotion and cut in hours on the fact that the employer was now fully staffed and no longer needed Mr. Livingston in the full-time manager trainee position. Mr. Livingston was not pleased with the demotion. Mr. Livingston had other employment that he had commenced prior to going to work for Wilson's. Mr. Livingston had continued in the other employment throughout his employment with Wilson's. Mr. Livingston last performed work for Wilson's on October 28, 2007. Mr. Livingston called in absences for three shifts during the following week. On November 3, 2007, Mr. Livingston appeared for work. Ms. Neff advised Mr. Wilson that she had secured someone to cover his

shift because she did not know if he would appear. Mr. Livingston notified Ms. Neff that he had begun working more hours in his other job and needed to reduce his availability for work at Wilsons to two days per week. Ms. Neff indicated this would not work for the employer. Mr. Livingston indicated he was quitting the employment. Mr. Livingston did not return.

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 weight of the evidence indicates Mr. Livingston's quit was prompted by the demotion and a dramatic reduction in assigned work hours. Mr. Livingston had worked in the full-time manager trainee position for approximately 11 months. The length of time Mr. Livingston continued in the full-time manager trainee position indicates that the position was not in fact temporary. The length of time Mr. Livingston continued in the position caused the title and full-time work hour to become the established conditions of Mr. Livingston's employment, despite the three weeks he spent in the part-time sales position at the very start of the employment. The weight of the evidence indicates that Mr. Livingston did not acquiesce in the change in the conditions of his employment that occurred on October 14, 2007. The weight of the evidence indicates that

Mr. Livingston's absences, increase in work hours at his other job, change in work availability and quit, closely followed the change in the conditions in his employment at Wilsons and were a response to those changes.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Livingston quit the employment for good cause attributable to the employer. Accordingly, Mr. Livingston is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Livingston.

DECISION:

The Agency representatives January 4, 2008, reference 04, decision is affirmed. The claimant 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css