

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY D HAYES

Claimant

APPEAL NO. 07A-UI-04032-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACI MECHANICAL INC

Employer

**OC: 03/25/07 R: 02
Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

ACI Mechanical, Inc. (ACI) filed an appeal from a representative's decision dated April 11, 2007, reference 01, which held that no disqualification would be imposed regarding Jerry Hayes' separation from employment. After due notice was issued, a hearing was held by telephone on May 7, 2007. Mr. Hayes participated personally. The employer participated by Laura Ring, Human Resources Manager; Randy Parks, Director of Small Projects; and Tom Grewell, Service Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Hayes was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hayes was employed by ACI from August 2, 2004 until March 20, 2007 as a full-time service technician. He quit the employment because of changes in the terms and conditions of his employment.

Prior to March 9, 2007, the employer did not have a written travel policy for the service department, of which Mr. Hayes was a member. If he was dispatched from his home, he was paid from the time he left home. If he was dispatched from the shop, he was paid from the time he left the shop. On March 9, Mr. Hayes was advised that he would not be paid for his time until he drove outside the 30-mile radius surrounding the employer's Clive, Iowa, shop location. The employer felt the 30-mile radius represented a reasonable commuting distance for work. The employer decided not to pay employees for this time because it was not used by the Fair Labor Standards Act in computing "work hours." If Mr. Hayes was assigned work within the 30-mile radius, his pay would start when he reached the worksite.

Employees were also advised on March 9 that the employer would not pay for time spent servicing the company vehicle assigned to them. Servicing included washing the vehicle and having oil changed. Employees routinely spent 30 minutes to one hour each week cleaning the

service vehicles. Employees were also advised that accrued vacation hours would be used to fill in any weeks in which they worked fewer than 40 hours. Employees retained the ability to ask that vacation time not be used for short weeks. As a result of meeting of March 9, Mr. Hayes quit the employment on March 20, 2007.

REASONING AND CONCLUSIONS OF LAW:

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Hayes quit because of changes in his contract of hire. The term "contract of hire" does not require a written agreement between the parties. It refers to the terms and conditions under which employment is offered and accepted. The contract of hire can be changed by mutual agreement or by one party acquiescing to changes unilaterally made by the other. An individual who leaves employment due to a substantial change in the contract of hire is entitled to job insurance benefits. 871 IAC 24.26(1).

The most noticeable change in the terms of Mr. Hayes' employment concerned travel time. With the change, if he traveled directly from his home to a jobsite, he would not be paid until he reached the jobsite or drove beyond a 30-mile radius surrounding the Clive office. He had been receiving pay from the time he left home until he reached the site, regardless of the jobsite location, other than to the Clive office. The employer felt that 30 miles was a reasonable commuting distance and, therefore, because employees are usually not paid for the time from home to work and back, its policy was reasonable. The issue is not the reasonableness of the employer's policy. The issue is whether it was the policy under which Mr. Hayes was hired and under which he worked beginning in August of 2004. The employer contended that the policy was not new, just that steps were being taken to make sure it was uniformly enforced. However, the employer testified that there was no travel policy in effect for the service department prior to March 9, 2007. As such, the policy represented a change for Mr. Hayes.

Mr. Hayes was no longer going to be paid for time spent servicing the vehicle. However, the time spent performing those activities was time spent on behalf of the employer. It was in the employer's best interest that routine servicing, such as oil changes and cleaning, be performed on its vehicles. It was the employer's expectation that the employees keep the vehicles clean and in good working order. Inasmuch as servicing the vehicle was a job responsibility, Mr. Hayes was entitled to have it paid for as work time.

The changes announced to Mr. Hayes on March 9 constituted substantial changes in the terms under which he had been working as the changes resulted in financial loss to him. He could lose at least one hour of pay for any day he had to work outside the 30-mile radius of the Clive office. It would take at least 30 minutes to travel the 30-mile distance in the morning and again on the return trip home. He would lose 30 minutes to one hour each week servicing the company vehicle. Without knowing where he would work on any given day, it would be difficult to assess the actual loss to Mr. Hayes.

The administrative law judge concludes that Mr. Hayes left his employment with ACI due to a substantial change in the terms and conditions of his employment as contemplated by 871 IAC 24.26(1). As such, he had good cause attributable to the employer for quitting. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated April 11, 2007, reference 01, is hereby affirmed. Mr. Hayes left his employment with ACI for good cause attributable to the employer. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css