

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

CRIS J CASTANEDA
Claimant

LCMR INCORPORATED
Employer

APPEAL NO. 22A-UI-15064-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/12/22
Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On July 14, 2022, Cris Castaneda (claimant) filed a timely appeal from the July 11, 2022 (reference 02) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on April 27, 2022 by failing to report for work for three days in a row and not notifying the employer of the reason for the absence. After due notice was issued, a hearing was held on August 22, 2022. Claimant participated. Amy Cavazos represented the employer and presented additional testimony through Matt Fenton. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-15065-JT-T. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 4 into evidence.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cris Castaneda was employed by LCMR Incorporated, doing business as Monarch Kitchen & Bar as a dishwasher and cleaner from June 2021 and last performed work for the employer on April 27, 2022. The claimant began the employment as a part-time dishwasher with a \$13.00 hourly wage. In August 2021, the claimant agreed to adding cleaning duties and the employer increased the claimant's wage to \$14.00 an hour. The claimant remained at the \$14.00 wage to the end of the employment.

In February 2022, the claimant commenced an approved leave of absence that was based on multiple health issues. The claimant's health issues included an ongoing back issue that may or may not have been work-related. The claimant's dishwashing duties required the claimant to lift heavy pots and stacks/racks of plates and was repetitive in nature. The claimant's back issue had prompted the claimant to see medical evaluation multiple times. The claimant's ongoing back issue gave rise to a worker's compensation claim that later led to a settlement agreement.

The claimant's health care provider released the claimant to return to work effective April 1, 2022 with a 20-pound lifting restriction. There were no other medical restrictions at that time. The lifting restriction was due to the claimant's ongoing back issue. The lifting restriction prevented the claimant from performing dishwashing duties, but did not prevent the claimant from performing cleaning duties.

The Iowa Workforce Development database readout (DBRO) that documents the benefits paid to the claimant also documents the wages this employer paid to the claimant during the second, third and fourth quarters of 2021. The claimant was employed with this employer throughout the third and fourth quarters of 2021. During the third quarter of 2021, the employer paid \$4,559.37 in wages, a weekly average of \$350.72. Using the \$14.00 hourly wage that took effect in August 2021, the \$350.72 average weekly wages corresponds to an average of 25 hours of work per week. During the fourth quarter of 2021, the employer paid \$6,350.75 in wages, a weekly average of \$488.52. Based on the \$14.00 hourly wage, the average weekly wage corresponds to average of about 35 hours of work per week.

Despite the claimant's ability to perform cleaning duties within his medical restrictions, the employer elected to schedule the claimant for minimal hours when the claimant returned to work in April 2022. During the week of April 10, 2022, the employer scheduled the claimant to work 9:00 a.m. to 11:00 a.m. on April 11 and April 13. The claimant was absent on April 11. The employer issued an attendance points "final warning" when the claimant reported for work on April 13. During the week of April 17, 2022, the claimant was scheduled to work 9:00 a.m. to 11:00 a.m. on April 18 and 20, 2022. During the week of April 24, the claimant was again scheduled to work two two-hour shifts. The claimant last performed work for the employer on April 27, 2022. During the week of May 1, 2022, the claimant was scheduled to work just one shift, May 2, 2022, 9:00 a.m. to 11:00 a.m.

Prior to May 2, 2022, the claimant decided to leave the employment in response to the substantial cut in work hours. The claimant ceased contact with the employer and ceased reporting for work after April 27, 2022.

REASONING AND CONCLUSIONS OF LAW:

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.

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 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 with good cause attributable to the employer due to a substantial changes in the contract of hire. The substantial changes in the contract of hire were the substantial cut in work hours and the associated substantial loss of wages. The weight of the evidence indicates the employer cut the claimant's work hours well beyond what would have been necessary to accommodate the claimant's 20-pound lifting restriction. The claimant quit the employment within a reasonable period after the substantial reduction in work hours. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representatives July 11, 2022 (reference 02) decision is reversed. The claimant voluntarily quit the employment effective May 2, 2022 with 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

September 30, 2022
Decision Dated and Mailed

jet/kmj

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.