

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**TOM HOLTZ
4417 KINGMAN BLVD
DES MOINES IA 50311**

**HOUSBY MACK INC
4747 NE 14TH ST
DES MOINES IA 50313**

**ROD MAHARRY
ATTORNEY AT LAW
317 - 6TH AVE STE 740
DES MOINES IA 50309**

**Appeal Number: 05A-UI-01154-JTT
OC: 01/09/05 R: 02
Claimant: Respondent (1R)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit
871 IAC 24.26(1) – Change in the Contract of Hire

STATEMENT OF THE CASE:

Kelly Housby filed a timely appeal on behalf of Housby Mack from the January 31, 2005, reference 01, decision that allowed benefits to Tom Holtz. After due notice was issued, a hearing was held on February 17, 2005. Tom Holtz was represented by attorney Rod Maharry and participated personally. Housby Mack and VOCON participated through Kelly Housby, President. Exhibits B, C, and G were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tom Holtz was employed by VOCON as Director of Marketing and Sales, from December 2003 until

December 24, 2004, when he voluntarily quit the employment rather than acquiesce in a change in the conditions of his employment.

Some discussion of the relationship between the various business entities involved is necessary. Housby Mack is a Mack truck dealership. Taylor & Martin is a Nebraska corporation that provides commercial truck auction and appraisal services. Taylor & Martin has a 50 percent ownership interest in VOCON. Kelly Housby and Kevin Housby together have a 50 percent ownership interest in VOCON. Kelly Housby is President of both Housby Mack and VOCON. VOCON stands for Vocational Construction Truck Auctions & Appraisals and is a business that auctions commercial trucks on consignment. Though Mr. Holtz was an employee of VOCON, he worked from an office at Housby Mack and received his paychecks from Housby Mack.

Mr. Holtz went to work for VOCON pursuant to an Employment Agreement executed on January 1, 2004. Mr. Holtz's duties as Director of Marketing and Sales are set forth on page 10 of the contract. Mr. Holtz's compensation package is set forth at paragraph 5 on page three of the contract. Under the contract, Mr. Holtz received a base salary of \$70,000.00 per annum and a quarterly bonus of \$7,500.00. Mr. Holtz's quarterly bonus was based on the total number of units, i.e. trucks, sold at VOCON auctions.

In July 2004, Taylor & Martin executives indicated to Kelly Housby and Kevin Housby that they were less than impressed with VOCON's production, and apparently blamed Mr. Holtz for the company's slower than expected revenue growth. During a meeting in July, the Taylor & Martin executives indicated a desire to terminate Mr. Holtz's employment. Taylor & Martin left it to the Housbys to decide precisely how best to deal with the problem of Mr. Holtz. However, VOCON had made the decision that Mr. Holtz was not going to continue at VOCON under the existing compensation arrangement.

Paragraph 6 on page 4 of the Employment Agreement addresses the circumstances under which VOCON would be obligated to provide severance pay to Mr. Holtz upon termination of employment. There had been no misconduct on Mr. Holtz's part. Thus, VOCON was obligated to pay Mr. Holtz the equivalent of six-months' base salary as severance pay. Under paragraph 6(b)(i), VOCON could avoid paying the severance pay if Mr. Holtz accepted employment with Housby Mack.

In September 2004, Mr. Holtz was advised that the VOCON owners were not pleased with the production figures for 2004. In December 2004, Kelly Housby and Kevin Housby met with Mr. Holtz for the purpose of negotiating a change in the conditions of Mr. Holtz's employment. Under the proposal, Mr. Holtz would no longer be an employee of VOCON. He would instead be an employee of Housby Mack. However, Mr. Holtz would continue to work on building VOCON's business. Under the proposal, Mr. Holtz's base salary would be reduced by half, to \$35,000.00 per annum. Under the proposal, Mr. Holtz would no longer receive a quarterly bonus that was based on the total number of VOCON units sold at auction. Instead, Mr. Holtz would receive a \$50.00 commission for each unit sold at auction that was a unit he had personally procured through his business contacts. In the words of Kelly Housby, "Rather than making a salary, he would actually have to earn it." The effect was a drastic two-thirds reduction in pay.

On December 24, 2004, after taking a few days off to "consider" the proposed change in his conditions of employment, Mr. Holtz advised the Housbys that he would not agree to the changes and resigned his position.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Holtz's voluntary quit was for good cause attributable to the employer. It does.

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.

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 evidence in the record, as set forth in the Findings of Fact, provides a textbook example of a voluntary quit in response to a change in the contract of hire. The proposed change in Mr. Holtz's compensation was substantial and drastic, including a \$35,000.00 reduction in base pay and another \$30,000 reduction in bonus pay. In essence, the employer was proposing to cut Mr. Holtz's salary by two-thirds. It would then be up to Mr. Holtz to attempt to make up the difference, as best he could, through commissions earned on units sold.

The proposed change in conditions of employment also would have involved, on the surface and essentially in name only, a change in employers. However, if the goal of VOCON had only been to change Mr. Holtz's salary arrangement, there would have been no need for the shell-game shift of employers from VOCON to Housby Mack. This conclusion was reinforced by Mr. Housby's testimony that Mr. Holtz would still be working to build VOCON's business. The only logical conclusion to be drawn from the facts is that the Housbys were indeed contemplating a way to get around the provision for severance pay set forth in the employment contract. The only logical conclusion to be drawn from the facts is that the Housbys fully expected Mr. Holtz to do what reason, common sense, and his dignity would dictate. They expected him to quit. They believed that if Mr. Holtz quit in the context of an offer of employment from Housby Mack then all bases would be covered. Mr. Housby's testimony indicated that he had not considered how the circumstances of Mr. Holtz's separation from the

employment would impact on Mr. Holtz's eligibility for unemployment. Mr. Holtz, other the other hand, did exactly what he needed to do to preserve his eligibility for benefits by not acquiescing in the change of conditions of employment.

Based on a careful review of the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Holtz voluntarily quit in direct and immediate response to a change in the contract of hire. Mr. Holtz's quit was for good cause attributable to the employer. Accordingly, Mr. Holtz is eligible for benefits provided he meets all other eligibility requirements.

DECISION:

The Agency representative's decision dated January 31, 2005, reference 01, is affirmed. The claimant quit for good cause attributable to the employer. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

The matter is remanded to the Tax Department for a determination of which employing entity, VOCON or Housby Mack, should be liable for benefits paid to the claimant in accordance with the Findings of Facts, Conclusions, and Decision herein.

jt/tjc