

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC L HESSE**

Claimant

**APPEAL NO. 14A-UI-08213-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RYDER INTEGRATED LOGISTICS INC**

Employer

**OC: 12/22/13**

**Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 30, 2014, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged, based on agency conclusion that the claimant voluntarily quit in response to substantial changes in the contract of hire. After due notice was issued, a hearing was held on August 28, 2014. Claimant Eric Hesse participated. Jordan Van Ervelde represented the employer and presented additional testimony through Dave. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibit One into evidence.

**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: Eric Hesse was employed by Ryder Integrated Logistics, Inc., as a full-time material handler from June 2013 until July 14, 2014, when he voluntarily quit in response to proposed changes in the employment. Prior to July 7, 2014, Mr. Hesse worked the overnight shift, from 10:00 p.m. to 6:00 a.m. Mr. Hesse's material handling duties on the overnight shift involved picking orders. Mr. Hesse bid on an open first shift position and moved to the first shift on July 7, 2014. The hours on the first shift were 6:00 a.m. to 2:00 p.m. The material handling duties on the first shift were supposed to be somewhat different from the duties on the overnight shift. Mr. Hesse was supposed to work in the kitting department on the first shift. Mr. Hesse's pay on the first shift was \$12.09 per hour. Mr. Hesse's pay on the third shift had been \$12.09 per hour plus a 75 cent shift differential. Mr. Hesse worked the first shift hours on July 7, 8 and 9, 2014. After Mr. Hesse's move to the first shift, the third shift had difficulty keeping up with order picking. For a couple of days while Mr. Hesse was on the first shift, the employer had him perform order picking duties, rather than the kitting department duties.

On July 9, 2014, the employer told Mr. Hesse that he would have to return to the overnight shift for one to three weeks. The employer told Mr. Hesse that he would have to appear work at

10:00 p.m. July 10, 2014. Mr. Hesse did not want to return to the overnight shift. Mr. Hesse thought the overnight work was more difficult on his body and on his personal life in light of the hours of the employment. Mr. Hesse got less sleep when he worked the overnight shift and was concerned that his morning drowsiness might lead to a car accident during his trip back home. Mr. Hesse asked to remain on the first shift, but the employer said that was not an option during the period the employer wanted Mr. Hesse to return to the overnight shift.

Mr. Hesse reported for work for the shift that started on the evening of July 10. Mr. Hesse was thereafter absent from work. On July 14, Mr. Hesse notified the employer that he was unable to return to the third shift and that it made him sick. The employer reaffirmed its decision not to allow Mr. Hesse to remain on the first shift. Mr. Hesse resigned from the employment, rather than return to work on the third shift.

### **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.

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 change in work hours that went into effect on July 7, 2014 was a substantial change in the conditions of the employment. That was a substantial change that Mr. Hesse sought because it worked better for him physically and better for his family life. The employer approved that substantial change in the conditions of the employment. The question is whether the subsequent change in the conditions of the employment, back to the overnight hours, also rose to the level a substantial change in the conditions of the employment. It did. Though Mr. Hesse might overstate the impact on his physical health, a reasonable person would expect overnight hours to impact a person's circadian rhythm, their cycle of wakefulness and sleepiness. A reasonable person would also expect that working overnight hours would have a substantial impact on a person's home life. Mr. Hesse had gone through the appropriate steps to secure the first shift position and the employer had approved his move to that position. Mr. Hesse had reasonably relied upon the employer's decision to move him to the first shift. Mr. Hesse offered the employer a compromise, to keep him on the first shift and to have him perform picking duties on that shift. The employer declined to take that middle path. Mr. Hesse had no way of knowing how long the employer would keep him on the third shift beyond the conflicting statements the employer had provided, which statements indicates that the employer did not actually know how long Mr. Hesse would actually stay on the third shift once he returned. Because the return to the third shift involved a substantial change in the conditions of the employment, Mr. Hesse was obligated to leave the employment in a timely manner in order to avoid giving the impression that he was acquiescing in the changed conditions.

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

**DECISION:**

The claims deputy July 30, 2014, reference 01, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css