

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TIMOTHY C JOKUMSEN
Claimant

APPEAL NO. 18A-UI-11984-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

**OC: 11/11/18
Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 3, 2018, reference 01, decision that held the claimant was eligible for benefits provided he met all other eligibility requirements and the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on October 25, 2018 due to a change in the contract of hire and for good cause attributable to the employer. After due notice was issued, a hearing was held on January 2, 2019. Claimant Timothy Jokumsen waived participation, as outlined below. Jackie Nolan of Employers Unity, L.L.C. represented the employer and presented testimony through Coral Erickson, Brandon Anderson, Mary Martin and Nellie Jessop. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 3 and 4 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

On December 17, 2018, the Appeals Bureau mailed a copy of the hearing notice to Mr. Jokumsen's last-known address of record. On December 19, 2018, the Appeals Bureau mailed a copy of the fact-finding materials to Mr. Jokumsen's last known address of record. The United States Postal Service (USPS) returned both mailings to the Appeals Bureau with a yellow sticker that indicated the correspondence was undeliverable as addressed and that the USPS was unable to forward the correspondence. The Appeals Bureau received the returned hearing notice on December 24, 2018. On December 26, 2018, an Appeals Bureau clerk telephoned Mr. Jokumsen at his last-known phone number of record. During that call, Mr. Jokumsen confirmed that the mailing address was correct, but stated that he did not wish to participate in the appeal hearing or receive related paperwork. The Appeals Bureau received the returned fact-finding materials on December 31, 2018. On that same day, the same Appeals Bureau clerk telephoned Mr. Jokumsen at his last-known phone number of record. During that call, Mr. Jokumsen again confirmed that the mailing address was correct, but again stated that he did not wish to participate in the appeal hearing or receive related paperwork.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Timothy Jokumsen was employed by Kinseth Hotel Corporation, doing business as Comfort Inn & Suites in Davenport, as a full-time housekeeper. Mr. Jokumsen's hourly wage was \$8.50. Mr. Jokumsen began the employment in March 2018. Mr. Jokumsen last performed work for the employer and voluntarily quit on November 1, 2018. Mary Martin, Housekeeping Supervisor, was Mr. Jokumsen's immediate supervisor throughout the employment. From the start of the employment until the employer posted the schedule that went into effect October 31, 2018, Mr. Jokumsen was scheduled for five housekeeping shifts per week for a total of about 35 hours per week. By working an average of 30 hours or more per week, Mr. Jokumsen would maintain eligibility for medical benefits beyond the first year of his employment. If Mr. Jokumsen averaged less than 30 hours per week during his first 12 months of employment, he would lose eligibility for medical coverage after the first year of the employment. At the start of the employment, in connection with defining eligibility for medical benefits, the employer provided Mr. Jokumsen with a "Variable Hour Employee Acknowledgement." The opening paragraph of the document stated as follows:

I understand that I am being hired as a "variable hour employee." This means I understand that I am not guaranteed a set number of hours per week, that I will be offered coverage during my first year of employment, and that I will have an initial waiting period for coverage of 59 days. Eligibility for coverage following my first year of employment is dependent upon establishing that I averaged at least 30 hours of service per week during my initial 12-months of employment.

On October 23, 2018, Brandon Andersen joined the Davenport Comfort Inn & Suites staff as General Manager. On the work schedule that went into effect October 31, 2018, the employer reduced Mr. Jokumsen's shifts to four per week and reduced his work hours to 20 to 25 hours per week. The management staff scheduled a meeting for 2:00 p.m. on November 1, 2018 to introduce Mr. Andersen to the staff and to address the employer's decision to cut housekeeping work hours department-wide in connection with a slowing of business.

On November 1, 2018, Mr. Jokumsen left the workplace at 2:30 p.m., after completing his housekeeping duties, but without appearing for the scheduled meeting. As Mr. Jokumsen exited the building, Nellie Jessop, Front Desk Supervisor, exiting the building to remind Mr. Jokumsen of the scheduled meeting. By the time Ms. Jessop got outside, Mr. Jokumsen was climbing into a vehicle and departing from the workplace. Mr. Jokumsen's sister also worked for the employer as a housekeeper and left the employment at the same time.

Mr. Jokumsen did not appear for further shifts. The only additional contact between the parties occurred on November 6, 2018, when Mr. Jokumsen went to the workplace to get his final paycheck. In the meantime, Mr. Jokumsen was absent for scheduled shifts on November 2, 3 and 4 without notifying the employer. The employer's written attendance policy required at least three hours' notice of an absence and presumed a voluntary quit where an employee was absent three consecutive days without personally speaking to a supervisor. The attendance policy was included in the handbook the employer provided to Mr. Jokumsen and that Mr. Jokumsen acknowledged at the start of his employment. When Mr. Jokumsen appeared to collect his check on November 6, 2018, Mr. Andersen took the opportunity to speak with him and told him that everyone's hours had been cut due to occupancy levels.

REASONING AND CONCLUSIONS OF LAW:

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 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.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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).

Despite Mr. Jokumsen's absence from the hearing, the evidence in the record establishes a voluntary quit for good cause attributable to the employer. Mr. Jokumsen's quit was not based on mere absence without notifying the employer for three consecutive work days. The circumstances surrounding Mr. Jokumsen's quit, including the close proximity between the substantial cut in hours and separation, indicate a quit based on the cut in work hours and the corresponding substantial reduction in weekly wages. Despite the Variable Hour Employee Acknowledgement the employer presented to Mr. Jokumsen at the start of the employment in reference to his eligibility for medical coverage, the established conditions of the employment included five shifts per week and approximately 35 hours per week. Regardless of the employer's motive for cutting hours, a reasonable person would conclude the impact on Mr. Jokumsen would be substantial and detrimental. The reduction in work hours brought with it about a 30 to 40 percent drop in Mr. Jokumsen's wages, not to mention the future impact on Mr. Jokumsen's eligibility for medical benefits. Mr. Jokumsen is eligible for benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The December 3, 2018, reference 01, decision is affirmed. The claimant voluntarily 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs