

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEMKE, RICHARD
Claimant

APPEAL NO. 12A-UI-00095-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANN'S MCDONALD LC
Employer

**OC: 11/27/11
Claimant: Appellant (2)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Richard Lemke filed a timely appeal from the December 28, 2011, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on January 31, 2012. Mr. Lemke did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Kristi Wallerich, store manager, represented the employer.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Richard Lemke was employed by Mann's McDonald restaurant in Burlington during two separate periods. The most recent period of employment began in December 2007. At that time, Mr. Lemke was hired as a part-time crew member. In January 2008, Mr. Lemke was promoted to part-time swing shift manager.

On November 29, 2011, Store Manager Kristi Wallerich notified Mr. Lemke that he was being demoted back to part-time crew member status. The number of hours available to Mr. Lemke each week would stay at approximately the same, but his wage would be reduced from \$9.65 to \$7.85 per hour. Mr. Lemke told Ms. Wallerich that he could not live on the reduced wage and that he planned to apply for unemployment insurance benefits. Ms. Wallerich told Mr. Lemke that the employer continued have work for him in the crew member position. After Mr. Lemke was absent without notifying the employer on December 2, 3, and 4, Ms. Wallerich documented him as a voluntary quit under the employer no-call, no-show policy. The no-call, no-show policy was in the handbook provided to Mr. Lemke at the start of his employment.

Ms. Wallerich demoted Mr. Lemke under the employer's three-strike rule after Mr. Lemke received warnings for unsatisfactory performance and violation of work rules. On September 3, the employer issued a verbal reprimand based on Ms. Lemke's inappropriate physical contact with an employee, other behavior, failure to provide appropriate direction to staff, and failure to

follow established performance standards. On November 1, the employer issued a reprimand to Mr. Lemke for failing to meet performance standards, including high labor costs, and not demonstrating a positive demeanor toward crew members. The employer warned Mr. Lemke of possible future suspension or demotion from his management position. On November 29, Ms. Wallerich issued a reprimand in connection with the demotion. The reprimand was based on Mr. Lemke's failure to properly perform his manager duties on November 18 and 19. During those shifts, Mr. Lemke's service response times exceeded established standards and Mr. Lemke was observed on his cell phone.

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.

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 establishes a voluntary quit in response to substantial changes in conditions of employment. Mr. Lemke announced his quit on November 29, at the time the employer announced the changed conditions, before he had been absent from three consecutive shifts without notifying the employer. The administrative law judge notes this was no mere quit in response to a reprimand. Instead, the quit was based on demotion from a

management to a non-management position and a significant, roughly 20 percent, reduction in pay. It was the reduction in pay that Mr. Lemke cited as the basis for his quit when he spoke to the employer on November 29. It is one thing to reprimand an employee, it is quite another to impose economic hardship. Under the ruling in Dehmel, it is the impact on Mr. Lemke, rather than the employer's motivation, that is to be considered. While the loss of title was significant, the 20 percent reduction in pay would have even greater negative impact on Mr. Lemke.

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

DECISION:

The Agency representative's December 28, 2011, reference 02, decision is reversed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw