

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY V GARBES**

Claimant

**APPEAL NO. 15A-UI-01361-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMEDY INTELLIGENT STAFFING INC**

Employer

**OC: 01/11/15**

**Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 26, 2015, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on February 26, 2015. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The employer participated through Vicki Matthias, Senior Staffing Consultant. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. 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.

This matter was originally set for hearing at 8:00 a.m. but was moved later in the day to conform to the administrative law judge's usual hearing schedule. On the day before the hearing, the employer agreed to the change in the hearing time. The claimant had not called in a number for the hearing. The change in the hearing time to later on the same day did not in any manner prejudice the parties.

**ISSUE:**

Whether Mr. Garbes' 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: The employer is a temporary employment agency. In May 2014 Larry Garbes started a full-time, temp-to-hire work assignment at Delta Sports Products. Until October 10, 2014 the work hours were 5:00 a.m. to 2:30 p.m., Monday through Friday. Effective Monday, October 13, 2014 the client business assigned Mr. Garbes to another work area. The employer reassigned Mr. Garbes from his original work area because the employer no longer needed Mr. Garbes in that work area. Mr. Garbes did not ask to be reassigned. The work in the new assignment required Saturday work as needed. Mr. Garbes worked in the new area from Monday, October 13, 2014 through Friday, October 17, 2014. Mr. Garbes was not needed on Saturday, October 18, 2014.

On Monday, October 20, 2014 Mr. Garbes spoke with Vicki Matthias, Remedy Intelligent Staffing Senior Staffing Consultant, and told her that he could not work Saturdays due to his Muslim faith. Mr. Garbes told the employer that he could not work from sundown on Friday to sundown on Saturday. Ms. Matthias told Mr. Garbes that she would check with Megan Rogers, a human resources representative at Delta Sports, regarding whether the client business would be willing to accommodate Mr. Garbes' request to not work Saturdays. Ms. Matthias told Mr. Garbes that if the client business was not willing to accommodate his request, he would have to work Saturdays. Mr. Garbes told Ms. Matthias that he could not work Saturdays and that he would have to quit if Saturdays were required. Ms. Rogers told Ms. Matthias that Delta Sports would not accommodate Mr. Garbes. Ms. Matthias relayed the decision to Mr. Garbes and Mr. Garbes voluntarily quit in response.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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).

Even without taking into consideration Mr. Garbes' faith, the evidence establishes a substantial change in the conditions of the employment through addition of Saturday shifts after Mr. Garbes had not been asked to work Saturday shifts during the previous five months or so in the employment. The addition of Saturday work had a greater impact on Mr. Garbes due to his religious faith.

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

**DECISION:**

The January 26, 2015, reference 01, decision is affirmed. The claimant voluntarily quit the employment on October 20, 2014 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

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