

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIM M DOWD
Claimant

APPEAL NO. 12A-UI-10141-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOME DEPOT USA INC
Employer

OC: 07/08/12
Claimant: Respondent (5)

Iowa Code Section 96.5(1) - Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 15, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 4, 2012. Claimant Kim Dowd participated and presented additional testimony through Lori Dowd. Timothy Sullivan represented the employer.

ISSUE:

Whether Mr. Dowd 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: Kim Dowd was employed by Home Depot as a part-time millwork associate from December 2011 and last performed work for the employer on June 16, 2012. For the first four to five months of the employment, the employer provided Mr. Dowd with approximately 34 hours per week of work. During the latter half of March, the employer dropped Mr. Dowd's work hours to 11 hours per week. In response to that, Mr. Dowd contacted a regional supervisor to complain about the loss work hours. Mr. Dowd also contacted Kim Hansen, the person who prepared the schedule. After that, Mr. Dowd's work hours rebounded somewhat so that he received 19 hours of work per week. Mr. Dowd continued to raise concerns about the overall drop in work hours. Mr. Dowd subsequently obtained a second job in response to the reduction in work hours at Home Depot. After he got the second job, Mr. Dowd told Home Depot he was only able to work at Home Depot on weekends and one weekday per week.

After Mr. Dowd worked on June 16, he was next scheduled to work on June 19. On June 19, Mr. Dowd called in sick and complied with the employer's absence reporting policy by calling at least an hour before his shift. Mr. Dowd was next on the schedule to work at noon on June 23, 6:00 a.m. on June 24, and at noon on June 30, 2012. Mr. Dowd did not know about those shifts, because he had not checked the work schedule after he worked on June 16. As of June 16, Mr. Dowd did not see any additional hours for him on the posted work schedule. Mr. Dowd did not return to work after being absent on June 19. He did make some attempts to

contact the employer by telephone, but never went back into the workplace to further address what he thought was a complete loss of work hours.

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 weight of the evidence in the record establishes that Mr. Dowd voluntarily quit in response to a change in the number of work hours the employer had available for him and based on his erroneous belief that the employer had completely written him off the schedule. The administrative law judge concludes that the change in work hours was a substantial change in the conditions of the employment. The administrative law judge further concludes that Mr. Dowd did not acquiesce in the change in conditions. Mr. Dowd's voluntary quit was for good cause attributable to the employer. Accordingly, Mr. Dowd is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's August 15, 2012, reference 01, decision is modified as follows. The claimant voluntarily quit the employment for good cause attributable to the employer in response to a change of contract of hire. 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

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