

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

GERONIMO ORTIZ NAVA
Claimant

APPEAL NO. 19A-UI-00276-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HD SUPPLY MANAGEMENT INC
Employer

OC: 12/16/18
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 3, 2019, reference 01, decision that held the claimant was eligible for benefits provided he met all other eligibility requirements and that the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on August 22, 2018 for good cause attributable to the employer. After due notice was issued, a hearing was held on January 28, 2019. Claimant Geronimo Ortiz Nava participated. Omar Santiago represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit 1 into evidence. The administrative law judge took official notice of the fact-finding materials, labeled D-1 through D-6, 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.

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: Geronimo Ortiz Nava was employed by HD Supply Management, Inc. on a full-time basis from September 2017 until July 28, 2018, when he voluntarily quit. Mr. Ortiz Nava began the employment as a full-time Counter Sales Associate. His starting wage was \$17.50 per hour. His work hours were Monday through Friday, 7:30 a.m. to 4:00 or 4:30 p.m. Mr. Ortiz performed his duties at the employer's Second Avenue Des Moines branch. At that start of the employment, Deborah Welch was the Des Moines Branch Manager and Roy Brown was the Regional Manager. Ms. Welch and Mr. Brown interviewed and hired Mr. Ortiz Nava. Until May 2018, Ms. Welch was Mr. Ortiz Nava's supervisor. In May 2018, Ms. Welch stepped down to an Assistant Branch Manager position and Michael Kent became the acting Des Moines Branch Manager. Mr. Kent was subsequently appointed Des Moines Branch Manager. Mr. Brown, Mr. Kent and Ms. Welch continued in their respective positions through the end of Mr. Ortiz Nava's employment.

On June 12, 2018, Mr. Ortiz Nava provided written notice to Mr. Kent, via email, that he would be resigning from the employment effective June 22, 2018. Mr. Ortiz Nava had at that time accepted a job offer from another prospective employer. At the time Mr. Ortiz Nava submitted his June 12, 2018 resignation letter, his hourly wage was \$17.92.

During the June 12-22, 2018 resignation notice period, Mr. Ortiz Nava learned that an Outside Sales Manager has separated from the Des Moines Branch of HD Supply. Mr. Ortiz Nava approached Mr. Kent and Mr. Moore about stepping into the Outside Sales Manager in lieu of leaving the company for new employment. Mr. Ortiz Nava, Mr. Kent, and Mr. Brown mutually agreed that Mr. Ortiz Nava's resignation would be rescinded and that Mr. Ortiz Nava would commence performing the Outside Sales Manager duties. Due to Mr. Ortiz Nava's inexperience in outside sales, Mr. Brown and Mr. Kent elected to have Mr. Ortiz Nava gradually step into the Outside Sales Manager duties. Mr. Ortiz commenced performing counter sales duties for half of his shift and performing outside sales manager duties for the other half of his shift. Mr. Ortiz Nava made contact with the former Outside Sales Manager's customers to transition those accounts to him. The employer provided Mr. Ortiz Nava with the former Outside Sales Manager's work cell phone. The employer ordered a notebook computer and business cards for Mr. Ortiz Nava, which cards set forth Mr. Ortiz Nava's job title as Outside Sales Manager.

In mid-June 2018 when Mr. Ortiz Nava, Mr. Kent, and Mr. Brown agreed that Mr. Ortiz Nava would transition into the Outside Sales Manager position, Mr. Brown told Mr. Ortiz Nava that he would look into increasing Mr. Ortiz Nava's pay. While Mr. Ortiz Nava was an hourly employee in the Counter Sales Associate, the Outside Sales Manager position was supposed to be a salaried position with a \$37,700.00 minimum annual salary and \$60,300.00 maximum annual salary. Though Mr. Kent and Mr. Brown had Mr. Ortiz Nava commence performing duties associated with the Outside Sales Manager position, neither took steps to officially post the opening or document Mr. Ortiz Nava's transition to the Outside Sales Manager duties.

On July 28, 2018, Mr. Brown told Mr. Ortiz Nava that due to corporate rules he would not be able to increase Mr. Ortiz Nava's pay in connection with Mr. Ortiz Nava's assumption of the Outside Sales Manager duties. On that same day, Mr. Ortiz Nava notified Mr. Kent and Mr. Brown that he was leaving the employment because he no longer wished to perform the duties associated with both the counter sales position and the outside sales position without a commensurate pay increase. Mr. Ortiz Nava left that employment that same day.

REASONING AND CONCLUSIONS OF LAW:

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.

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 weight of the evidence in the record establishes a voluntary quit for good cause attributable to the employer. The parties mutually agreed to rescind Mr. Ortiz Nava's June 2018 resignation and mutually agreed that Mr. Ortiz Nava would be promoted to the Outside Sales Manager position. Mr. Ortiz Nava reasonably concluded, based on Mr. Kent and Mr. Brown's words and deeds, that he was hired for the Outside Sales Manager position. Mr. Ortiz Nava in fact commenced performing duties associated with the Outside Sales Manager position. The change in duties was itself a substantial change in the conditions of the employment. The implied promise to pay Mr. Ortiz more for performing the duties, and the failure to follow through on the implied promise, were also substantial changes in the conditions of the employment. Mr. Ortiz Nava reasonably relied upon Mr. Brown's indication that the change in responsibilities would ordinarily come with a pay increase. Mr. Ortiz Nava had no way of knowing that Mr. Kent and Mr. Brown were acting outside HD Supply corporate policy. When Mr. Ortiz Nava learned that the increased responsibilities would not be accompanied by an increase in pay, he promptly separated from the employment.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

A reasonable person would conclude that Mr. Kent and Mr. Brown misled Mr. Ortiz Nava into performing duties with greater responsibility for the same pay. The circumstances rise to the level of detrimental working conditions. Mr. Ortiz Nava promptly left the employment when he figured out he had been misled. A reasonable person may well have felt compelled to do the same.

Because the evidence in the record establishes a voluntary quit for good cause attributable to the employer, Mr. Ortiz Nava is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The January 3, 2019, reference 01, decision is affirmed. The claimant voluntarily quit the employment for good cause attributable to the employer. The quit was effective July 28, 2018. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs