

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOHN F NELSON
2256 CARROLL AVE
SERGEANT BLUFF IA 51054

CHARLIE ZOOK MOTORS
2101 E 6TH ST
PO BOX 3266
SIOUX CITY IA 51102

Appeal Number: 05A-UI-02711-JTT
OC: 01/30/05 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

John Nelson filed a timely appeal from the March 4, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 31, 2005. Mr. Nelson participated in the hearing. The employer participated through Dan Schoenherr, Sales Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: John Nelson was employed by Charlie Zook Motors as a full-time sales person from October 1, 1998 until January 29, 2005, when he voluntarily quit the position due to a significant decrease in income.

Mr. Nelson's pay structure was as follows. Mr. Nelson was paid a weekly draw of \$300.00. Mr. Nelson was then paid a commission on each vehicle he sold. The employer had four commission levels. Employees with higher sales received a higher commission. In 2003, Mr. Nelson's average gross weekly pay was \$600.00. Beginning in early 2004, overall sales for the dealership began to decline and Mr. Nelson's sales also declined. Mr. Nelson's income declined to an average weekly gross of \$550.00. In June 2004, Mr. Nelson's income declined to an average weekly gross of \$350.00 to \$400.00. In October 2004, when a nearby dealership took a more aggressive approach to sales, Mr. Nelson's income declined further. During the last three months of his employment, Mr. Nelson was on "probation," due to low sales.

On January 29, Mr. Nelson approached the sales manager and advised him that he was going to quit the position because he thought he could make more money elsewhere. Mr. Nelson apparently did some farming on the side.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Nelson's voluntary quit was for good cause attributable to the employer.

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.

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 indicates a change in the contract of hire. This is because the reduction in sales and corresponding reduction in Mr. Nelson's pay were not attributable to Mr. Nelson. The employer provided no evidence that Mr. Nelson's efforts decreased. Rather, Mr. Nelson

pointed to the economy and the employer pointed to an aggressive nearby competitor as the cause for Mr. Nelson's decreased sales and corresponding decrease in income. However, Mr. Nelson did not quit the employment in a timely manner. By not quitting in a timely manner, Mr. Nelson acquiesced in the changed conditions of his employment and became ineligible for benefits. It appears that Mr. Nelson left to pursue self-employment, which would also disqualify him for benefits. See 871 IAC 24.25(19).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Nelson's quit was not for good cause attributable to the employer. According, Mr. Nelson is disqualified for benefits.

DECISION:

The Agency representative's decision dated March 4, 2005, reference 01, is affirmed. The claimant's quit was not for good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

jt/pjs