

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WAYNE V HUBERTY**  
Claimant

**APPEAL NO. 07A-UI-01565-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 01/21/07 R: 03  
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Wayne Huberty filed a timely appeal from the February 8, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 27, 2007. Mr. Huberty participated. David Williams of TALX UC eXpress represented the employer and presented testimony through Jim Funcke, Wine and Spirits Store Manager, and Mike Stoermer, Store Director.

**ISSUES:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.  
Whether the quit was prompted by a significant change in the conditions of employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Wayne Huberty was employed by Hy-Vee as a part-time cashier/clerk in the Wine and Spirits Store for six years until January 19, 2007, when he voluntarily quit in response to a decrease in his scheduled work hours. Jim Funcke, Wine and Spirits Store Manager, was Mr. Huberty's immediate supervisor.

Mr. Huberty collects Social Security Disability Insurance (SSDI) benefits. To maintain his eligibility for benefits, Mr. Huberty has to limit his non-SSDI monthly income to \$780.00. Based on Mr. Huberty's hourly wage, Mr. Huberty knew that he could not work more than 80 hours per month. Mr. Huberty expected to be scheduled to work 80 hours each month. Because of his need to maintain his Social Security eligibility, Mr. Huberty could not make up low hours from one month by working extra hours the next. Aside from the limit on the number of hours he could work per month, Mr. Huberty placed no other restrictions on his work availability.

Mr. Huberty did not receive the number of hours he desired in January 2007. Mr. Funcke scheduled Mr. Huberty for 13 hours on the January 1-7 schedule. Mr. Funcke scheduled Mr. Huberty for 18 hours on the January 8-14 schedule. Mr. Funcke scheduled Mr. Huberty for 13 hours on the January 15-21 schedule. Mr. Funcke scheduled Mr. Huberty for 13 hours on the January 22-28 schedule. On January 19, Mr. Huberty saw the most recent schedule

prepared and posted by Mr. Funcke. That schedule was for the period of Monday, January 29 through Sunday, February 4. Mr. Funcke scheduled Mr. Huberty for two shifts at the beginning of February, for a total of 13 hours. When Mr. Huberty realized his hours for January would total only 57, he asked Mr. Funcke why his hours had been cut. Mr. Funcke told Mr. Huberty that everyone's hours had been reduced due to a decrease in business after a busy December. Mr. Huberty knew of one or more employees whose hours had not been reduced and mentioned this to Mr. Funcke. Mr. Funcke then cited Mr. Huberty's unsatisfactory salesmanship and knowledge of wine as a justification for the reduction in hours. When Mr. Huberty challenged this characterization of his abilities, in light of his six years' employment, Mr. Funcke told Mr. Huberty that he did not want to argue with him. Mr. Funcke told Mr. Huberty that more hours would be available in February. Mr. Huberty had never worked for Hy-Vee outside the Wine and Spirits Store. Mr. Huberty did not ask for hours in the main store and Mr. Funcke did not offer hours in the main store. Within 15 minutes of his complaint, Mr. Huberty notified Mr. Funcke that he was resigning due to the reduction in his hours.

Mr. Huberty's scheduled hours of employment for May 22 through December 31, 2006 were as follows:

5/22-28	=10.5
5/29-6/4	=14
6/5-11	=Not Available
6/12-18	=12
6/19-25	=15
6/26-7/2	=6
7/3-9	=28
7/10-16	=13
7/17-23	=14.5
7/24-30	= Not Available
7/31-8/6	=12
8/7-13	=20
8/14-20	= Not Available
8/21-27	=12
8/28-9/3	=12.3
9/4-10	=22
9/11-17	=21
9/18-24	=12
9/25-10/1	=13
10/2-8	=20
10/9-15	=19
10/16-22	=20
10/23-29	=20
10/30-11/5	=14.5
11/6-12	=22.5
11/13-19	=12
11/20-26	=21.5
11/27-12/3	=13
12/4-10	=20
12/11-17	=13
12/18-24	=20
12/25-31	=14.6

Based on the scheduling information set forth above, Mr. Hubert was scheduled for anywhere from six hours to 28 hour per week. Mr. Hubert's hours during this period averaged 18.5.

Based on the scheduling information set forth above, the employer did not in fact consistently schedule Mr. Hubert for all of his 80-hour monthly availability.

### **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 fails to establish a substantial reduction in hours. Rather, the evidence indicates that the employer continued to schedule Mr. Huberty within the range of hours he had historically worked. Even taking into account the lack of information for three weeks indicated above, the evidence does not support Mr. Huberty's assertion that the employer consistently scheduled him to work 80 hours per month. The evidence indicates that Mr. Huberty's quit was based on his sense of being slighted by Mr. Funcke's critical comments and his knowledge that another employee had been granted more hours on the schedule.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Huberty voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Huberty 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. The employer's account shall not be charged for benefits paid to Mr. Huberty.

**DECISION:**

The Agency representative's February 8, 2007, reference 01, decision is affirmed. The claimant voluntarily quit the employment without 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. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs