

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEFFREY S CANNON Claimant	APPEAL NO. 07A-UI-10410-JTT ADMINISTRATIVE LAW JUDGE DECISION
SUMNER EXTRUDING COMPANY INC Employer	OC: 09/30/07 R: 03 Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jeffrey Cannon filed a timely appeal from the October 31, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 28, 2007. Mr. Cannon participated. Gary Hoeger, owner, represented the employer and presented additional testimony through John Prickett, mechanic.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant quit in response to intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jeffrey Cannon was employed by Sumner Extruding Company as a part-time mechanic from November 1, 2005 until October 2, 2007, when he voluntarily quit. The employer is a small auto repair and tire shop. At the time of Mr. Cannon's employment, the mechanic staff consisted of owner Gary Hoeger, mechanic John Prickett, and Mr. Cannon. Mr. Cannon had a history of poor attendance, based on personal and family medical issues, but also based on personal issues. Mr. Cannon's absences put a strain on the employer's ability to operate the business.

Mr. Cannon was absent due to illness on September 26 through 29, and October 1 and notified the employer of the absences by leaving a message on the employer's answering machine prior to the start of business each day. The employer lacked a formal attendance policy. Mr. Cannon has chronic bronchitis. Mr. Cannon saw the doctor on September 28 and obtained a note that excused his absences on September 28, 29, and October 1. The note released Mr. Cannon to return to work on October 2. The note did not address the absences on September 26 and 27. During Mr. Cannon's final absence, the employer was short staffed and had to turn away business. During Mr. Cannon's final absence, Mr. Hoeger had farm harvest duties that further hindered operation of the auto shop.

Mr. Cannon returned to work on the morning of October 2. Mr. Hoeger had already been at the workplace and had conducted inventory. Mr. Hoeger was displeased that he could not locate two tires that appeared to have disappeared from the workplace after a prior similar incident. Mr. Hoeger left the workplace to conduct other work-related business before Mr. Cannon arrived for work, but returned at approximately 9:00 a.m. At that time, Mr. Hoeger directed both mechanics to look for the missing tires. The mechanics did not locate the missing tires.

Mr. Hoeger then summoned Mr. Cannon to the office. Mr. Cannon provided Mr. Hoeger with his doctor's note. Mr. Hoeger asked Mr. Cannon if he was aware of how much business the employer had lost due to Mr. Cannon's absence. Mr. Cannon responded that he had been sick. Mr. Hoeger told Mr. Cannon that he had to close the shop to go combine beans. Mr. Hoeger asked Mr. Cannon whether he was going to quit. Mr. Cannon said no. Mr. Hoeger referenced that Mr. Cannon had probably missed 45 days of work in 2007. Mr. Cannon indicated the number might be higher. Mr. Hoeger then told Mr. Cannon that he would have to start reducing Mr. Cannon's wage to compensate for the business lost during Mr. Cannon's absences. Mr. Hoeger told Mr. Cannon that he would probably be making minimum wage before long. Mr. Cannon's wage at the time was \$9.00 per hour. Mr. Hoeger also told Mr. Cannon that he needed to buy his own tools that day. A basic set of tools would cost \$300.00 to \$500.00. Mr. Cannon had used Mr. Hoeger's tools and the other mechanic's tools throughout the employment. There had been a discussion at the start of the employment about Mr. Cannon buying his own tools, and occasional passing remarks on the topic during the employment. However, Mr. Cannon had used Mr. Hoeger's tools and Mr. Prickett's tools throughout the employment. Mr. Hoeger was yelling at Mr. Cannon during most of exchange in the office. Mr. Hoeger was using profanity and Mr. Cannon responded in kind. Mr. Hoeger continued to press the issue of Mr. Cannon buying his own tools that very day. Mr. Cannon responded that the employer was forcing him to quit. Mr. Cannon then told Mr. Hoeger to give him his last check and that he was quitting.

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.

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).

The greater weight of the evidence does not indicate that Mr. Cannon quit in response to intolerable conditions that would have prompted a reasonable person to quit the employment. The evidence indicates that use of profanity was common in the workplace and was used by both Mr. Hoeger and Mr. Cannon on October 2. The evidence indicates that, under the circumstances, any yelling that occurred did not rise to the level of intolerable or detrimental working conditions.

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 greater weight of the evidence in the record does establish that Mr. Cannon quit in response to significant changes in the conditions of his employment. The first significant change was the employer's requirement that Mr. Cannon spend \$300.00 to \$500.00 to procure his own tools on October 2 in order to continue in the employment. The second significant change was the employer's decision to reduce Mr. Cannon's wage in response to any further absences and the threat to reduce Mr. Cannon's pay to minimum wage.

The evidence in the record persuades the administrative law judge that the quit was for good cause attributable to the employer. Accordingly, Mr. Cannon is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Cannon.

DECISION:

The Agency representative's October 31, 2007, reference 01, decision is reversed. The claimant quit the employment 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs