

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY D HENDERSON**  
Claimant

**APPEAL NO. 14A-UI-12897-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FQSR LLC**  
Employer

**OC: 11/23/14**  
**Claimant: Appellant (2)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Larry Henderson filed a timely appeal from the December 10, 2014, reference 02, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that he had voluntarily quit on November 12, 2014 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 13, 2015. Mr. Henderson participated. Russell Dhamers, Store Manager, represented the employer. Exhibits One and Two were received into evidence. Issues related to the separation from the employment had been erroneously omitted from the hearing notice and the hearing notice instead erroneously listed the issue as timeliness of protest. The parties waived formal notice on whether the claimant had been laid off, discharged for misconduct, or had voluntarily quit without good cause attributable to the employer.

**ISSUE:**

Whether Mr. Henderson separated from the employment for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Larry Henderson was employed by FQSR, L.L.C., d/b/a KFC as a part-time cook. Mr. Henderson performed his work duties at the employer's store on Kimberly Road in Davenport. Russell Dhamers was and is Store Manager at the Kimberly Road location. Argus Wiley is the area supervisor. Tina Roepcke is the morning manager at the Kimberly Road location. Mr. Henderson started the employment in 2013. The employer has other stores in the Quad Cities area.

On November 10, 2014, Mr. Henderson was absent from his morning shift because he had run out of a prescription for heart medication and prescription blood pressure medication. Mr. Henderson was waiting on his doctor and the pharmacy to take necessary steps to refill the medications. Mr. Henderson notified the employer of his absence 20 minutes before his shift was to start. The employer's written attendance policy required three hours' notice of an

absence. The employer had provided Mr. Henderson with Mr. Dhamers' cell phone number for use to notify the employer of absences.

On the afternoon of November 11, 2014, toward the end of Mr. Henderson's scheduled shift, Mr. Dhamers summoned Mr. Henderson to a meeting. The purpose of the meeting was to review and issue a written reprimand for the late notice Mr. Henderson had provided the day before. Mr. Henderson thought the reprimand was unjustified and protested loudly during the meeting. Mr. Henderson's conduct and demeanor was disruptive to the meeting and to store operations. A management trainee had to tell Mr. Henderson to quiet down because customers could hear him. As part of the reprimand, Mr. Dhamers told Mr. Henderson that he would be moved from the day shift to the evening shift. Mr. Henderson had been on the day shift up to that point. The day shift hours started at 8:30 a.m. and generally ended around 3:30 p.m. In response to Mr. Henderson's conduct during the meeting, Mr. Dhamers told Mr. Henderson that he would probably have to go work at one of the employer's other stores. The employer had another store a few miles to the east of the Kimberly Road store. The employer also had a store in Moline. After the meeting, Mr. Henderson continued to be disruptive of store operations by enlisting coworkers into a conversation about the reprimand. Mr. Henderson asserted to the coworkers that Mr. Dhamers has lied in connection with the meeting and reprimand. Based on the disruption Mr. Henderson was causing to store operations, Mr. Dhamers directed Mr. Henderson to leave the store. That directive was not intended or understood to be a discharge.

Mr. Henderson was next scheduled to work on November 13. On November 12, Mr. Henderson telephoned Mr. Dhamers and asked what was going on. Mr. Dhamers told Mr. Henderson that the store managers and the area supervisor had spoken and that Mr. Henderson was to finish out the week at the Kimberly Road location and start working at the Elmore store in Davenport the following Tuesday. On Thursday, November 13, Mr. Henderson was scheduled to start his shift at 8:30 a.m. Ms. Roepcke was the manager on duty. Mr. Henderson appeared at the workplace, but refused to commence working until he had a meeting with Mr. Dhamers and Mr. Wiley. Ms. Roepcke and Mr. Henderson spoke with Mr. Dhamers separately by telephone. Mr. Dhamers told Mr. Henderson that since he was refusing to perform work, he needed to clock out. Mr. Wiley reiterated the directive a short while later. The employer told Mr. Henderson that his choice was to go work at the other location or not work for the employer.

After Mr. Henderson left on November 13 without working his shift, there was not further contact between the parties. On November 16, the employer concluded that Mr. Henderson had quit the employment and removed him from the payroll.

#### **REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The weight of the evidence in the record establishes a voluntary quit, not a discharge. The employer's directive to Mr. Henderson that he clock out was preceded by Mr. Henderson's refusal to perform his assigned duties. It was not a discharge from the employment. Mr. Henderson communicated his voluntary quit by refusing to perform his assigned duties and by not appearing for further work.

Iowa Code § 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).

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 does not establish intolerable or detrimental working conditions. The employer reasonably expected Mr. Henderson to provide proper notice of his need to be absent from work. Mr. Henderson became belligerent when the employer proceeded with a reprimand. Though a reprimand in response to the late notice of the absence was not unreasonable, the employer's decision to include a change in shift constituted a substantial change in the conditions of the employment. The employer's subsequent decision to compel Mr. Henderson to go work at another store, miles away, was a further substantial change in the conditions of the employment. Mr. Henderson's separation from the employment was in response to the employer's decision to substantially change the conditions in the employment. The voluntary quit due to substantially changed work conditions was for good cause attributable to the employer and would not disqualify Mr. Henderson for unemployment insurance benefits. Mr. Henderson is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The December 10, 2014, reference 02, decision is reversed. The claimant quit the employment for good cause attributable to the employer due to substantial changes in the conditions of the employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs