

**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**

**LEO W FRITZ
1427 REDWOOD AVE
BRIGHTON IA 52540**

**P AND A FARMS LTD
CROOKED CREEK SHOOTING PRESERVE
2911 COPPOCK RD
WASHINGTON IA 52353**

**Appeal Number: 05A-UI-11525-JTT
OC: 05/29/05 R: 03
Claimant: Respondent (2)**

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
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

P and A Farms filed a timely appeal from the October 31, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 29, 2005. Owner and Manager Kay Schwendinger represented the employer. Claimant Leo Fritz participated and presented additional testimony from Amy Eubanks of People's Savings Bank.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Leo Fritz was employed by P and A Farms as a game-farm egg-hand at Crooked Creek Shooting Preserve from August 6, 2004 until May 22, 2005, when he voluntarily quit. Mr. Fritz's duties included assisting in raising birds, performing farm work, and assisting hunters utilizing the

shooting preserve. Mr. Fritz's immediate supervisor was Tony Schwendinger. Mr. Fritz quit for multiple reasons.

Mr. Fritz's quit was also primarily prompted by the prospect of being disciplined by the employer in connection with several different situations. The employer had observed that Mr. Fritz was putting more miles on the employer's truck than could be justified by the work Mr. Fritz performed. The employer had observed that Mr. Fritz was repeatedly absent from the farm during work hours without authorization. There were personality differences between Mr. Fritz and the various members of the owners' family. Mr. Fritz believed that owner Tony Schwendinger regularly appeared at the workplace in an intoxicated state. A week before Mr. Fritz quit, Mr. Fritz had neglected to set the employer's seed drill to plant the appropriate concentration of seed in a field, which resulted in the crop being planted too thin. Mr. Fritz attributed the error to Mr. Schwendinger and asserted that Mr. Schwendinger was intoxicated when he told Mr. Fritz to set the seed drill for too low a concentration. Mr. Fritz asserts he was just following Mr. Schwendinger's instructions. Mr. Fritz was not happy with being assigned to teach the employer's son how to perform various farming duties. Mr. Fritz was aware that the employer was not happy with Mr. Fritz's reluctance to teach the employer's son how to operate the farm equipment. Mr. Fritz quit when he did to avoid being disciplined by the employer in the immediate future.

Until approximately two months prior to the quit, Mr. Fritz had experienced difficulty in cashing some of his paychecks because the employer did not always have sufficient funds in its checking account. Mr. Fritz's bank reached a point where it decided to place a 5-day hold on checks Mr. Fritz received from the employer before allowing Mr. Fritz to withdraw money based on the face value of the check. On several occasions, Mr. Fritz's presented his paycheck for cash at the employer's bank and the bank refused to honor the check based on insufficient funds in the account. In December 2004, Mr. Fritz wrote checks based on the paycheck he had deposited in his checking account and then incurred overdraft charges on the checks he wrote because the employer had insufficient funds in its checking account to cover the paycheck. Mr. Fritz again had problems with his paycheck in January and March. In March, Mr. Fritz complained to the employer's on-site administrative assistant about the situation with his paychecks. The owners subsequently met with Mr. Fritz and advised him to put the checks in his bank then wait several days for the checks to clear. Mr. Fritz ultimately decided that the situation with his paycheck was intolerable. Mr. Fritz did not have difficulty cashing a paycheck after March 2005, but did not quit until midway through his shift on May 23, 2005. It was not the situation with the paychecks that prompted the quit.

Mr. Fritz established a claim for benefits that was effective May 29, 2005, and has received benefits totaling \$1,404.00.

REASONING AND CONCLUSIONS OF LAW:

Mr. Fritz argues that he quit due to a change in the conditions of employment whereby the employer failed to pay him in a timely fashion for his labor. In addition, Mr. Fritz argues that the working conditions were intolerable due to Mr. Schwendinger appearing at the workplace in an intoxicated belligerent state. The employer argues that Mr. Fritz had done several things in the course of the employment that prompted the employer to discipline him, that Mr. Fritz walked off the job, and that Mr. Fritz quit without good cause attributable to the employer.

The question is whether the evidence in the record establishes that Mr. Fritz's voluntary quit was for good cause attributable to the employer. It does not.

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).

On the other hand, quits prompted by personality differences with a coworker or supervisor, quits prompted by dissatisfaction with the work environment, and quits in response to reprimands are all presumed to be without good cause attributable to the employer. See 871 IAC 24.25(6), (22), (21), and (28).

The evidence in the record establishes that it was not problems with paychecks that prompted Mr. Fritz to quit the employment. Indeed, there were not such problems for at least a month and a half prior to the quit. Instead, the evidence in the record establishes that Mr. Fritz was aware the employer was preparing to discipline him for misconduct in connection with the employment and elected to sever the employment relationship prior to being reprimanded. The evidence establishes that Mr. Fritz quit due to the personality differences between himself and the owners' family. The evidence further establishes that Mr. Fritz quit due to dissatisfaction with the work environment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Fritz's quit was without good cause attributable to the employer. Accordingly, Mr. Fritz 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. Fritz.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The \$1,404.00 in benefits Mr. Fritz has received which constitutes an overpayment that the law requires Mr. Fritz to repay.

DECISION:

The Agency representative's decision dated October 31, 2005, reference 01, is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a 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. The claimant is overpaid \$1,404.00.

jt/pjs