

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARC L HEADLEY
Claimant

ROCK INDUSTRIES INC
Employer

APPEAL 20A-UI-15637-SC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/20/20
Claimant: Respondent (5)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On November 23, 2020, Rock Industries, Inc. (employer) filed an appeal from the November 19, 2020, reference 01, unemployment insurance decision that allowed benefits based upon the determination Marc L. Headley (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing held by telephone on January 26, 2021. The claimant participated personally. The employer participated through Loy Vant Hul, Manager, and Chad Vant Hul, Heat Treat Supervisor. No exhibits were offered into the record.

ISSUES:

Did the claimant voluntarily quit employment with good cause attributable to the employer or did the employer discharge the claimant for job related misconduct?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Heat Treat Technician beginning on March 24, 2014. The claimant was hired to work the late shift from 4:00 p.m. to 2:00 a.m., and he earned \$23.50 an hour. He does not drive, his family has only one vehicle, and his wife works during the day. It is easier for him to get to work when he works the late shift.

The claimant returned from vacation on August 19 and the employer informed him that he would be working the day shift. The employer elected to move another employee to the late shift because they believed he was more skilled. As a result, the claimant's work schedule was changed to 7:00 a.m. to 4:00 p.m. The claimant also lost his \$5.00 shift differential and only earned \$18.50 an hour when working during the day.

On August 26, the claimant spoke to Chad Vant Hul, Heat Treat Supervisor, about the change in shift and pay. Chad advised the claimant to speak with Loy Vant Hul, Manager. There was some miscommunication regarding when the conversation was to occur, but the claimant did not report to work on August 27 and 28 or notify the employer of his absence. On August 31, the claimant did not report to work but he reached out to Loy via email and raised his concerns about the shift and his pay. Loy notified him that he was “voluntarily terminated” due to missing work for two days without notification. (Loy Testimony) Had the claimant reported to work on August 31, there would have been continuing work for him on the day shift earning \$18.50 an hour.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged, but he voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed.

Iowa Code section 96.5 provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

...

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left his employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee

exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992).

The employer has established that the claimant made a voluntary choice to end the employment relationship by not reporting for work or notifying the employer of the absence. The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988).

The claimant has met the burden of proof to show he voluntarily quit with good cause attributable to the employer. The claimant's pay was reduced by 21 percent and his shift was changed from night to day after six years, which made it more difficult to report to work. While the employer is entitled to make personnel decisions based upon its needs, that need does not necessarily relieve it from potential liability for unemployment insurance benefit payments. Based on the totality of the circumstances, the change in contract of hire was substantial and the separation was with good cause attributable to the employer. Benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and the employer's account cannot be relieved of charges.

DECISION:

The November 19, 2020, reference 01, unemployment insurance decision is modified with no change in effect. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and the employer's account cannot be relieved of charges.



Stephanie R. Callahan
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

February 11, 2021
Decision Dated and Mailed

src/ol