

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER T POTTER

Claimant

APPEAL NO. 12A-UI-05863-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOHL'S DEPARTMENT STORES INC

Employer

OC: 04/22/12

Claimant: Respondent (5)

Section 96.5(1)(a) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 9, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 12, 2012. Claimant participated. Heather Marquez, Store Manager, represented the employer. Exhibits One through Four were received into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Christopher Potter was employed by Kohl's Department Stores as a part-time stockman from 2010 until January 15, 2012, when he voluntarily quit in response to a substantial reduction in his work hours, in response to prior incidents of verbal abuse perpetrated by an assistant manager, and because he had located new employment. Mr. Potter last performed work for the employer on December 29, 2011. Though the employer had a written policy that indicates part-time employees are not guaranteed a specific number of hours per week, Mr. Potter had been receiving approximately 30 hours of work per week. The employer decided to substantially cut Mr. Potter's hours after the holiday season. Mr. Potter requested time off during the first couple weeks of January 2012 and was to return to work on January 15, 2012. The employer scheduled Mr. Potter for only one four-hour shift during the week that started Sunday, January 15, 2012. This was to punish Mr. Potter for alleged prior attendance matters. Mr. Potter had gone to the store manager on prior occasions to complain about inappropriate, profane comments an assistant manager had directed at him on multiple occasions in the presence of other employees. Mr. Potter had complained to the store manager about the conduct, but then heard nothing further from the store manager on that matter. Mr. Potter decided after his time off at the beginning of January not to return to the employment. Mr. Potter had accepted another position at Lowe's and started the new employment at the end of January.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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).

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 weight of the evidence in the record establishes a voluntary quit for good cause attributable to the employer. The evidence indicates that the employer substantially changed the conditions of Mr. Potter's employment effective January 15, 2012, when the employer reduced his work hours from about 30 hours per week down to four hours per week. While the employer asserts it had 16 hours per week for Mr. Potter, the weight of the evidence does not support this assertion. The dramatic decrease in Mr. Potter's hours cannot be substantially attributed to the post holiday slowdown. Instead, the employer intentionally decreased Mr. Potter's hours to a minimal amount. Not surprisingly, the substantial cut in hours, provoked a quit.

While the cut in hours, and the opportunity to accept new employment, were the primary bases for the quit, verbal abuse Mr. Potter had received from an assistant manager also factored into the quit. The employer made no meaningful effort to follow up with Mr. Potter about the ill treatment he had received after he reported the verbal abuse to the employer. Mr. Potter reasonably expected some form of meaningful follow-up and feedback from the store manager in response to his concerns.

Had the new employment been the only basis for the quit, it would be appropriate to allow benefits, but relieve the employer of liability for benefits. But, in this case, there was both a substantial change in the conditions of employment and detrimental working conditions. The quit was for good cause attributable to the employer. Mr. Potter is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Potter.

DECISION:

The Agency representative's May 9, 2012, reference 01, decision is modified as follows. 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