

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDY SCHMOLL
Claimant

JEWELL MACHINE & FABRICATION
Employer

APPEAL 21A-UI-03533-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/01/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 24.26(1) – Voluntary Leaving – Change in Contract of Hire

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 12, 2021, (reference 01) unemployment insurance decision that denied benefits based on the conclusion he voluntarily quit due to an insubstantial change in his contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on March 26, 2021. Claimant participated and testified. He was represented by John Graupmann. Employer participated through Human Resources Manager Adam Berntgen. There were not any exhibits entered into the record.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

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 machine operator from June 5, 2017, until she was separated from employment on October 30, 2020, when he quit. His immediate supervisor was Production Control Manager Spencer Ellis. The claimant had a set schedule working the first shift that spans from 5:30 a.m. to 4:30 p.m. He has not worked a shift other than the first shift.

The claimant does not have transportation to commute to the employer's worksite. He relies on a coworker who lives across the street to drive him to the worksite from his residence which is about seven miles away. This coworker works first shift as well. The worksite is in a rural area outside of the city limits of Davenport, Iowa. Ride sharing services are not reliable at 2:30 a.m. in the area. Mass transportation is similarly unreliable to commute to the work site.

On October 27, 2020, Mr. Ellis informed the claimant that he would be switched to second shift effective November 2, 2020. The second shift is from 4:00 p.m. to 2:30 a.m. The claimant was selected because he had experience with lathes and the employer could trust him to use the equipment effectively. Mr. Ellis told the claimant that they did not know how long he would be in

the position, but said that it likely would be several months. The claimant said he was unwilling to do it. He did not specify why he was unwilling to work it, although the employer was aware he lacked transportation.

On October 30, 2020, the claimant told Foreman Jake Olney and Human Resources Manager Adam Berntgen that he would not be working the second shift and would be resigning from his position. Mr. Berntgen gave the claimant until the morning of November 2, 2020 to think it over. The claimant did not report for work on November 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was with good cause attributable to the employer.

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.

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:

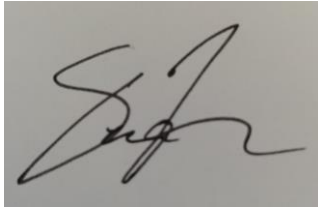
(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes 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.

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). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The administrative law judge finds the employer's proposal to change the claimant's shift from day shift to night shift was a substantial change in the contract for hire. It would place a significant burden on his ability to commute to and from work. Benefits are granted.

DECISION:

The January 12, 2021, (reference 01) unemployment insurance decision is reversed. The claimant quit due to a substantial change in the contract of hire. Benefits are granted provided he is otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

April 5, 2021
Decision Dated and Mailed

smn/lj