

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER C MILLER
Claimant

APPEAL NO. 07A-UI-05572-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC
Employer

**OC: 05-06-07 R: 03
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 25, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 20, 2007. The claimant did participate and was represented by Paul McAndrew, Attorney at Law. The employer did participate through Craig Deacon, Store Manager. Claimant's Exhibits 1 and 2 were entered and received into the record. Employer's Exhibit A was entered and received into the record.

ISSUE:

Did the claimant voluntarily quit his employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an in-town delivery driver, part-time, beginning December 11, 2002, through May 3, 2007, when he voluntarily quit.

In late March 2007 the claimant asked for vacation from April 30, 2007 through May 4, 2007. The claimant was told that he may not be granted his vacation time. On April 26, 2007, the claimant's supervisor, David Brennamen, told him that he did not have any vacation time to use and that his request for time off had been denied. The claimant admitted that he was told by his supervisor that his request for a vacation from April 30 through May 4 was denied and that he was specifically told that if he was a three-day no-call, no-show from work he would be considered a voluntary quit pursuant to the employer's policy. The claimant was provided this information on April 26, 2007. The employer does not automatically grant a vacation request or a time-off request. The claimant went on vacation from April 30 through May 4 and never returned to work, because he assumed his employment had ended because of what his supervisor had told him on April 26, 2007.

Although the claimant's hours had been reduced in January 2007, he admitted that he did not quit because his hours had been reduced. The claimant continued to work for months after his hours were reduced.

While the claimant alleges that three sexual advances were made toward him by a supervisor, prior to quitting the claimant never made any complaint about any sexual advances by a supervisor. The claimant admits he did not quit because of any alleged sexual advances made by a supervisor.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

871 IAC 24.25(4), (25) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(25) The claimant left to take a vacation.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. *Cobb v. Employment Appeal Bd.*, 506 N.W.2d 445 (Iowa 1993). In late March 2007 the claimant told his supervisor, Mr. Brennamen, that he wanted to take vacation in April and May. At that time, the claimant was told that his vacation request might not be approved. The employer does not automatically grant vacation or time off for every employee who requests it. The claimant had no reason to expect that his vacation would be granted merely because he asked for the time off, particularly when he was told by Mr. Brennamen in March not to expect the request to be granted.

The claimant's own testimony was that he did not quit because his hours were reduced. The claimant's work hours had been reduced since January 2007, but the claimant continued to work. Claimant's resignation seven months after substantial change in the contract of hire was a disqualifiable event because the claimant was held to have acquiesced in the changes. *Olson v. EAB*, 460 N.W.2d 865 (Iowa App. 1990). The claimant acquiesced to the change in hours by continuing to work and by his own testimony that he did not quit because of reduced hours.

The claimant did not ever complain to the employer about the alleged sexual advances until after his employment ended. The claimant did not quit because of any intolerable working environment but because he was angry that the employer would not give him time off for a vacation. The employer has the right to allocate its personnel in accordance with its needs and available resources. The employer is not required to grant a vacation request.

Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays, in violation of the employer's policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

DECISION:

The May 25, 2007, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw