

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AARON B STOUT
Claimant

FRASE CONSTRUCTION INC
Employer

APPEAL NO. 20A-UI-15596-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Aaron Stout, filed a timely appeal from the November 10, 2020, reference 01, decision that disqualified him for unemployment insurance benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on April 1, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 26, 2021. The claimant participated. Jeremy Frase represented the employer.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jeremy Frase owns and operates Frase Construction, Inc. Aaron Stout was employed by Frase Construction, Inc. during two distinct periods. The most recent period of employment began on March 11, 2019. During the most recent period of employment, Mr. Stout was employed as a full-time concrete crew foreman. Mr. Frase was Mr. Stout's supervisor. Mr. Stout's wage at the start of the most recent employment was \$15.00 an hour. The employer increased the wage to \$19.00. Mr. Frase and Mr. Stout discussed a potential future partnership arrangement whereby Mr. Stout would be receive a percentage of the revenue generated by concrete work.

Mr. Stout last performed work for the employer on April 1, 2020. On that day, Mr. Frase went to the concrete project jobsite to check on the status of the project. Mr. Frase was in the habit of periodically checking to ensure that the project was progressing and that the work was being performed satisfactorily. Mr. Stout perceived the business owner's actions in looking after his business to be micromanagement and harassment. When Mr. Frase arrived at the jobsite on April 1, 2020, he observed Mr. Stout sitting in his vehicle while the other crew members worked on the concrete project. Mr. Frase spoke with Mr. Stout out of earshot of the crew. Mr. Frase asked Mr. Stout what he was doing in his truck and Mr. Stout replied that he was on a break. Mr. Frase did not have an issue with Mr. Stout taking a break. Mr. Stout took offense and walked away from the conversation. Mr. Stout located a personal hammer he had that the

jobsite and then left the jobsite. Mr. Frase assumed that Mr. Stout would cool off and return the next day. When Mr. Stout did not return to work the next day, Mr. Frase made multiple phone calls to Mr. Stout, but Mr. Stout did not answer. Mr. Stout thereafter sent a series of text messages to Mr. Frase in which he expounding on things he believed Mr. Frase did wrong. Mr. Stout told Mr. Frase that he did not need him and that he was going to start his own company. Shortly thereafter, Mr. Frase observed that Mr. Stout had posted yard signs advertising Mr. Stout's new company. Mr. Stout did not return to the employment at Frase Construction.

At the time, Mr. Stout voluntarily separated from his employment with Frase Construction, the level and consistency of the concrete projects had not yet reached the point where Mr. Frase was ready to further the discussion regarding possible partnership with Mr. Stout. Throughout the employment, the employer had continued to pay Mr. Stout his regular wage, regardless of whether there was concrete work to perform. During the period of the employment, the employer offered Mr. Stout some weekend side projects as informal subcontracting opportunities. Mr. Frase had to rescind some of those opportunities when Mr. Stout did not follow through on the projects. In addition, the employer had to work to remedy, in terms of time and expense, some concrete projects that the construction crew had performed incorrectly under Ms. Stout's supervision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

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.

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).

Iowa Admin. Code r. 871-24.25 provides, in pertinent part:

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 section 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 section 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

...

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

...

(27) The claimant left rather than perform the assigned work as instructed.

Iowa Admin. Code r. 871-24.26(1) and (4) 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.

..
(4) The claimant left due to intolerable or detrimental working conditions.

“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 test is whether working conditions are intolerable and/or detrimental included consideration of 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).

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. The claimant presented insufficient evidence to substantial his allegation that the employer micromanaged and/or harassed him. It was not unreasonable for the employer to look after his business by periodically checking on the status of projects. The weight of the evidence fails to support the claimant's assertion that the employer embarrassed the claimant in front of other employees. The evidence establishes that the claimant unreasonably took offense to the employer's inquiry regarding why the claimant was sitting his truck while others worked. The claimant rashly walked off the job. The claimant decided not to return to the employment, though the employer continued to have work for him and called him repeatedly in an attempt to continue the employment. The claimant elected to establish his own business in lieu of returning to the employment and promptly took steps to do just that. The weight of the evidence indicates dissatisfaction with the working relationship with the employer. The evidence does not establish intolerable and/or detrimental working conditions and does not establish a change in the contract of hire. The employer continued to pay the claimant his established wage and indeed increased the wage. The parties had no definite agreement regarding entering into partnership and no definite agreement regarding paying the claimant a percentage of concrete project proceeds. The level of concrete business and the claimant's inconsistent performance hindered the parties from getting that point in the relationship. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work

equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The November 10, 2020, reference 01, decision is affirmed. The claimant voluntarily quit the employment on April 1, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

February 11, 2021
Decision Dated and Mailed

jet/mh

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.