IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TROY A BALL
Claimant

O'REILLY AUTOMOTIVE INC
Employer

APPEAL NO. 13A-UI-11930-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/29/13
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 17, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 15, 2013. Claimant participated. Larry Roof 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: Troy Ball was employed by O'Reilly automotive Inc. as a full-time delivery specialist until September 17, 2013, when he voluntarily quit in response to changes in the conditions of the employment. On September 3, 2013, Mr. Ball notified the employer that he was giving his two weeks' notice. Mr. Ball had started the employment as a parts specialist and had transitioned into the delivery specialist position in August 2012. Mr. Ball's work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday. In the delivery specialist position, Mr. Ball would deliver parts in the Fairfield community for an hour in the morning. In the afternoon, Mr. Ball would deliver parts as part of an assigned route for two to three hours. Mr. Ball would otherwise help at the sales counter and perform other associated duties. Rick Peck, Store Manager, was Mr. Ball's immediate supervisor at the end of the employment. In late June, Mr. Peck had a recently hired delivery specialist take over the afternoon delivery route and had Mr. Ball begin working at the sales counter in the afternoon. Mr. Ball continued to be responsible for the morning local delivery route. Though Mr. Ball was not happy with this arrangement, he continued in the arrangement two months before he submitted his resignation. Mr. Ball's pay and work hours had remained the same. Mr. Ball found waiting on customers at the sales counter stressful. In August 2013, Mr. Peck commenced a medical leave of absence, which left the auto parts store short-staffed.

The last straw that prompted Mr. Ball to give his two weeks' notice was the denial of his request for time off at the end of August or beginning of September. Larry Roof, District Manager, was functioning as the Store Manager at the time. After Mr. Roof denied Mr. Balls request for time off, he posted a sign by the schedule on September 1 that said there would be no time off

granted without his knowledge and approval of the request. All staff knew the situation was temporary and would end when Mr. Peck returned to work at the end of his leave. Mr. Ball gave his two-week notice two days after the sign restricting vacation was posted.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

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 evidence in the record establishes changes in the conditions of the employment, but not changes that qualify as substantial. Mr. Ball's pay, work hours, and work location remained the same. Mr. Ball retained his morning delivery route. The only change was that Mr. Ball spent more time at the sales counter in the afternoon instead of making the afternoon deliveries. The nature of Mr. Ball's position was selling parts to customers. When Mr. Ball delivered parts he was in essence selling parts to customers. While waiting on retail customers at the sales counter was different from delivering parts, the duties were sufficiently similar or related, that the change in duties did not amount to a substantial change in duties that would prompt a reasonable person to leave. The administrative law judge is hard pressed to see how looking up parts for a customer or interacting with a customer at the sales counter would be especially

stressful on an employee, like Mr. Ball, who had been performing parts selling duties for the employer for several years. The counter work might not have been Mr. Ball's preference, but that is not enough to make the change in duties substantial. In any event, Mr. Ball acquiesced in the changed duties by electing to remain in the employment under the changed conditions for two months or more before he submitted his resignation.

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).

The denial of a single time off request, at a time when the store was understaffed, did not give rise to substantial changes in the working conditions or to intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. The employer provided staff with a reasonable basis for restricting time off requests. Staff, including Mr. Ball, knew the situation was temporary. In addition, Mr. Roof did not bar all time off requests. Instead, he merely notified employees that he would have to approve all time off.

Mr. Ball voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Ball is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The Agency representatives October 17, 2013, reference 01, decision is affirmed. The claimant voluntarily quit the employment 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 ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs