

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN D REEDY
Claimant

APPEAL NO. 20A-UI-05696-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 04/26/20
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Ryan Reedy filed a timely appeal from the June 3, 2020, reference 01, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Reedy voluntarily quit on September 15, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 7, 2020. Mr. Reedy participated. Julie Andersen, Employment Specialist, represented the employer. Exhibits 1 through 14 were received into evidence.

ISSUES:

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: Ryan Reedy was employed by Express Services, Inc. from July 2019 until October 30, 2020, when he voluntarily quit. Express Services is a temporary employment agency. In July 2019, Express Services placed Mr. Reedy in a full-time, temp-to-hire work assignment at Midwest Warehouse Solutions (MWS). Mr. Reedy's duties at MWS involved installing warehouse equipment throughout Iowa. The work involved a substantial amount of driving. Mr. Reedy's workday could begin as early as 4:00 a.m. and could end as late as 9:00 p.m. Mr. Reedy's hourly wage was \$19.00. Mr. Reedy's hourly wage for work over 40 hours per week was \$28.50. Mr. Reedy received a per diem reimbursement for meals. Tim Henniger owns MWS and was Mr. Reedy's immediate supervisor.

Mr. Reedy last performed work for Midwest Solutions on Friday, October 11, 2020. On October 21, 2020, Mr. Henniger contacted Express Services to advise that Mr. Reedy had not been at work all week. Mr. Henniger advised that MWS would need a doctor's note to support the absence. Mr. Henniger added that Mr. Reedy had a MWS-issued company phone and computer. Mr. Henniger asked Express Services to look into the basis for the absence.

On October 22, 2020, Julie Andersen, Employment Specialist, called Mr. Reedy's number and left a message requesting a return call. On October 23, 2020, Mr. Reedy returned the call. At

that time, Mr. Reedy stated that he was in the hospital. Mr. Reedy did not indicate how long he had been in the hospital or why he was hospitalized. Mr. Reedy advises that he was hospitalized for five or six days due to “exhaustion, burn out,” and being “emotionally wiped out.” Mr. Reedy asserts that he had left a message with Brandy Henniger regarding his need to be absent. Mr. Reedy advised that he would fax a doctor’s note that day. Mr. Reedy asserts that he mailed a doctor’s note to Express Services. Express Services did not receive a doctor’s note.

Mr. Reedy did not return to the MWS assignment or to the Express Services employment. During the October 23, 2020 contact, Mr. Reedy asserted that he had been shorted on his pay. Express Services issued payment to Mr. Reedy based on information provided by MWS payroll personnel. Mr. Reedy asserts that he was shorted 5.5 hours of overtime pay in the check issued September 22, 2020 for the pay-period of September 16-22, 2020. Mr. Reedy asserts that he was shorted three hours of overtime pay in the check issued September 29, 2020 for the pay-period of September 23-29, 2020. Mr. Reedy asserts that he did not receive the per diem reimbursement for 2.5 days of travel in the check issued October 6, 2020 for the pay-period of September 30, 2020 through October 6, 2020. However, that check reflects a \$93.25 per diem reimbursement. Mr. Reedy asserts that he was shorted 12 hours of overtime in the check issued on October 13, 2020 for the pay-period of October 7-13, 2020. Mr. Reedy further asserts that he was paid a diminished mileage reimbursement amount in that check, rather than appropriate wages for his travel time. That check does reflect an unusual “Mileage paid as wages” entry with an associated \$66.50 payment. On October 30, 2020, Mr. Reedy advised Express Services that he would not be returning to MWS, due to the wage payment issue. Ms. Andersen relayed Mr. Reedy’s assertion of underpayment to Holly Eichmann, Express Services Franchise Owner. On October 31, 2020, Ms. Anderson called Mr. Reedy to advise that Ms. Eichmann would be calling him on November 1, 2020. On November 1, 2020, Ms. Eichmann called Mr. Reedy, but had to leave a message. Mr. Reedy did not make himself available to further discuss his assertion that he had been underpaid for his labor.

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). 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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(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).

Iowa Administrative Code rule 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:

24.26(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 establishes a voluntary quit for good cause attributable to the employer. The employer presented insufficient evidence to rebut Mr. Reedy's assertion that he was repeatedly shorted on his pay for work performed for MWS. Not being paid for work performed would constitute a substantial change in the conditions of the employment, as well as an intolerable and detrimental working condition that would prompt a reasonable person to leave the employment. Mr. Reedy is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The June 3, 2020, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. The quit was effective October 30, 2020. 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

July 16, 2020
Decision Dated and Mailed

jet/sam