

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARCUS E AMERISON
Claimant

KWIK TRIP INC
Employer

APPEAL NO. 22A-UI-04542-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/09/22
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On February 11, 2022, the employer filed a timely appeal from the February 4, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant voluntarily quit on September 11, 2021 with good cause attributable to the employer and due to a change in the contract of hire. After due notice was issued, a hearing was held on March 24, 2022. The claimant did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Kaylea Venz represented the employer. Exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO. The administrative law judge took official notice of the fact-finding materials for the limited purpose of documenting the employer participation in the fact-finding interview.

ISSUES:

Whether the claimant voluntary quit with good cause attributable to the employer.
Whether the claimant was overpaid benefits.
Whether the claimant must repay overpaid benefits.
Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Marcus Amerison, was employed by Kwik Trip, Inc. as a part-time Guest Service Coworker (cashier/clerk) at the employer's Newton gas station and convenience store from October 2020 until September 11, 2021, when the claimant voluntarily quit. Kaylea Venz, Store Leader, was the claimant's supervisor. On or about August 28, 2021, the claimant provided a written two-week notice that he was quitting the employment and that his last day would be September 11, 2021. The claimant indicated he was leaving for personal reasons, but did not

otherwise specify the basis for his decision to leave the employment. The employer continued to have work available to the claimant at the time he separated from the employment.

When the claimant started the employment, the claimant indicated he was available to work second shift and third shift hours. At the time the claimant started the employment, the employer told the claimant he could expect to receive about 28 hours a week and that the shifts times would be 2:00 p.m. to 10:00 p.m., 3:00 p.m. to 11:00 p.m., 4:00 p.m. to midnight, or 10:00 p.m. to 6:00 a.m. The claimant initially worked on the second shift as he underwent initial training. The claimant then trained for a week or two on the overnight shift. The claimant then settled into primarily working overnight shifts with one or two evening shifts per month. After a 90-day performance review, the claimant's regular wage was \$13.55 an hour. The overnight shift provided an additional \$2.00 an hour shift differential or premium.

Toward the end of the employment, the claimant and the employer discussed concerns about the claimant's ability to keep up with the work duties on the overnight shift. The claimant requested additional training. The employer desired to have the claimant work with a second shift supervisor to get the additional training by working a couple 2:00 p.m. to 10:00 p.m. shift per week for a couple weeks or until the claimant was more comfortable with the work duties. The employer did not have staff supervisory staff available to provide training on the overnight shift. The claimant was initially open to receiving the training on the second shift, but once the employer put the evening shift hours on the schedule, the claimant decided he did not want to participate in the evening shift training and instead provided his two-week notice. The employer had not issued any reprimands to the claimant. The claimant's work was not in jeopardy.

The claimant established an original claim for benefits that was effective January 9, 2022. Iowa Workforce Development set the claimant's weekly benefit amount at \$330.00. The claimant received \$2,310.00 in benefits for the seven weeks between January 9, 2022 and February 26, 2022. Kwik Trip, Inc. is the sole base period employer. On February 2, 2022, the claimant and the employer participated in a fact-finding interview that addressed the claimant's separation from the employment. Kaylea Venz represented the employer at the fact-finding interview.

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.

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.

"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 a September 11, 2021 voluntary quit without good cause attributable to the employer. The employer's request that the claimant participate in training during the evening shift for a couple evenings per week for a couple weeks or until the claimant was comfortable was a reasonable accommodation of the claimant's request for additional training and did not constitute a substantial change in the conditions of the employment. The claimant did not participate in the appeal hearing and did not present any evidence to rebut the employer's testimony. The claimant presented no evidence to establish a substantial change in the conditions of the employment or any other good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible for benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received benefits, but this decision disqualifies the claimant for those benefits. Accordingly, the benefits the claimant received constitute an overpayment of benefits. The claimant is overpaid \$2,310.00 in benefits for the seven weeks between January 9, 2022 and February 26, 2022. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The February 4, 2022 (reference 01) decision is REVERSED. The claimant voluntarily quit the employment on September 11, 2021 without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,310.00 in benefits for the seven weeks between January 9, 2022 and February 26, 2022. The claimant must repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.



James E. Timberland
Administrative Law Judge

April 18, 2022
Decision Dated and Mailed

jet/mh