

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ROMEO D KIMMINS**  
Claimant

**ALPHA SERVICES INC**  
Employer

**APPEAL 19A-UI-05998-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/06/19**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

On July 29, 2019, Alpha Services, Inc. (employer) filed an appeal from the July 26, 2019, reference 05, unemployment insurance decision that allowed benefits based upon the determination Romeo D. Kimmins (claimant) voluntarily quit with good cause attributable to the employer, specifically a change in his contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on August 21, 2019. The claimant did not respond to the hearing notice and did not participate. The employer participated through Compliance Manager Steve Tyson. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history.

**ISSUES:**

Did the claimant voluntarily quit the employment with good cause attributable to the employer?  
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Laborer beginning on October 11, 2018, and was separated from employment on June 4, 2019, when he quit. The claimant was hired to work third shift, which operated from 11:00 p.m. to 7:00 a.m. On June 4, his supervisor notified him that he would move to second shift, which would mean working 3:00 p.m. to 11:00 p.m., due to a change in staffing needs. The claimant immediately resigned his position.

The administrative record reflects that the claimant has not received unemployment benefits since filing his additional claim effective July 7, 2019. The administrative record also establishes that the employer did participate in the fact-finding interview.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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.

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.

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The claimant was hired to work third shift. The claimant's shift was being changed from third to second shift which is a substantial change in terms of unemployment under which he was hired. The employer did not establish that the reason for the change in schedule was due to disqualifying misconduct on the part of the claimant. Therefore, the claimant quit with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

**DECISION:**

The July 26, 2019, reference 05, unemployment insurance decision is affirmed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. The issue of overpayment is moot and charges to the employer's account cannot be waived.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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