

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MURL D LEWIS
Claimant

APPEAL NO: 11A-UI-16492-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS IOWA MANAGEMENT CO INC
Employer

**OC: 11/27/11
Claimant: Appellant (1-R)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(24) – Retirement
871 IAC 24.26(1) – Job Change
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated December 23, 2011, reference 01, that held he voluntarily quit employment without good cause attributable to the employer on November 28, 2011, and benefits are allowed. A telephone hearing was held on January 26, 2012. The claimant, and his wife, Joan, participated. Annette Grote, HR Generalist, and Oscar Vargas, Security Supervisor, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony, and having considered the evidence in the record, finds: The claimant was hired by the employer as a part-time security officer on September 5, 1996, and he became full-time in 1999. The claimant worked five 8-hour days a week, Wednesday thru Sunday, for 40 hours each week.

Sometime prior to the employment separation on November 28, claimant requested to move to part-time, 4 days a week, or 32 hours each week. The employer denied the request, but gave him the choice to move to on-call employment status. Claimant declined.

Claimant signed an employment termination form on November 30 effective November 28 that he was quitting. The HR department received information from co-workers that claimant stated he was retiring. Claimant's date of birth is August 14, 1934.

During the latter period of claimant's employment he was scheduled and did work a 12-hour shift on August 19, September 16 and October 21. The employer made the request due to guest/staffing levels. Although claimant was scheduled to work a 12-hour shift on November 20

& 26, he called in to state he would not do so. According to employer policy, he would be awarded one point for missing work, and ten points is the threshold for termination. Claimant had no attendance issue up to November 20 or at the time he resigned.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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.

871 IAC 24.25(24) provides:

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 § 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 § 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:

(24) The claimant left employment to accept retirement when such claimant could have continued working.

The administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer effective November 28, 2011 due to resignation based on retirement.

The employer scheduling change to work a 12-hour shift for one day in August, September and October is a modest deviation from the regular 40-hour workweek. Claimant was understandably upset about the employer denying his request to go part-time, and responded by telling other employees he was retiring. The claimant wanted to reduce his work hours while the employer needed to have him work more on a few occasions.

He called off 12-hour work shifts on two days leading to his retirement decision that did not place him in jeopardy of losing his job due to attendance. While claimant might have had good

personal reasons for leaving employment, his retirement decision is not based on a substantial change in the claimant's employment that constitutes a voluntary quit with good cause.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Since claimant left due to retirement stating he did not want to work full-time, the able and available issue is remanded to claims for department fact-finding.

DECISION:

The department decision dated December 23, 2011 reference 01 is affirmed. The claimant voluntarily quit without good cause attributable to the employer on November 28, 2011. Benefits are denied until the claimant has worked in and is paid wages for insured work, equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The able and available issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs