

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ADAM SELIM
Claimant

CINTAS CORPORATION NO 2
Employer

APPEAL NO. 23A-UI-10834-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/22/23
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On November 20, 2023, Adam Selim (claimant) filed a timely appeal from the November 13, 2023 (reference 01) decision that disqualified him for benefits and that ruled the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on October 20, 2023 without good cause attributable to the employer. The claimant requested an in-person hearing. After due notice was issued, a hearing was held on December 14, 2023 at the Davenport IowaWORKS Center. Claimant participated. Neither the employer nor its third-party representative appeared for the hearing. Exhibits A through K were received into evidence.

ISSUES:

Whether the claimant voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Adam Selim (claimant) was employed by Cintas Corporation as a full-time Service and Sales Representative from May 2023 until October 23, 2023 when he voluntarily quit. The claimant was hired to work as a route deliver and sales driver. At the time the claimant accepted the employment, the employer represented that the pay would be \$50,000.00 annually and that the work week would consist of four 10-hour shifts. At the time the claimant accepted the employment, the employer represented that there would be a three-month training period that would include computer-based training and on-the-job training with a trainer. The claimant would generally start his work day at 4:00 a.m. The employer did not provide the promised computer-based training. The employer immediately assigned the claimant to work under another Service and Sales Representative (route driver) as a "helper." That person told the claimant he was not a trainer.

After the claimant had worked as a helper for three months, the employer assigned the claimant to his own delivery, service and sales route. At the same time, the employer told the claimant that his pay was changing to \$25.00 an hour for a 40-hour work week. The employer told the claimant that he would likely make \$2,000.00 to \$3,000.00 less per year than promised, but that he would have the opportunity to earn commission pay by upselling. The claimant acquiesced

in the changed in pay structure. However, the claimant said that it took 14 to 16 hours to complete his deliver and sales route, rather than the 10 hours the employer represented. The claimant found it impossible to take a break during his workday but was aware the employer deducted pay for a lunch break from his paycheck. The claimant also found that the paystubs the employer provided were presented in an unintelligible format.

Toward the end of the employment, the claimant suffered wrist strains in both arms in the course of performing his work duties. The employer sent the claimant to a doctor who imposed restrictions that included lifting up to 5 pounds occasionally, pushing/pulling up to 10 pounds occasionally, and gripping/squeezing and pinching with his left and/or right arm occasionally. See Exhibit J. The restrictions prevented the claimant for operating a vehicle. The doctor also referred the claimant to physical therapy and provide wrist braces for the claimant to wear while performing work. The employer was not pleased with the work restrictions. The employer had the claimant continue to assist with his route, but assigned another employee to drive the delivery truck. The employer required the claimant to work outside his medical restrictions to load the truck in preparation for deliveries. The employer initially provided transportation to the claimant to and from work and medical appointments. However, the employer then became increasingly indifferent to the claimant's need for transportation.

As of October 18, 2023, the claimant had medical restrictions that included a restriction to lifting no more than 10 pounds frequently, pushing/pulling up 20 pounds frequently, an explicit prohibition against driving a company vehicle due to diminished grip strength, a prohibition against using power/impact/vibratory tools. The restrictions allowed the claimant to grip/squeeze/pinch with his right upper extremity frequently.

The claimant decided to leave the employment after the employer announced that the employer was going to cut the size of the claimant's assigned route and told the claimant this would result in a significant, unspecified reduction in the claimant's pay. The claimant also based his decision to quit on the employer imposing hurdles regarding the claimant's ability to secure transportation to and from work and medical appointments. The claimant notified the employer on October 23, 2023 that he was quitting the employment and made the quit immediately effective. The claimant was still under medical care at the end of the employment, but the quit was not based on advice from a doctor.

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 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 voluntary quit for good cause attributable to the employer, based on a substantial change in the contract of hire and intolerable and detrimental working conditions that would have caused a reasonable person to leave the employment. The triggering change in the contract of hire was the employer's announcement of substantial, unspecified reduction in the claimant's compensation. The intolerable and detrimental working conditions included the change in pay, requiring the claimant to work outside his medical restrictions, and diminishing and/or discontinuing transportation support to and from work and medical appointments in connection with the work related injury. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The November 13, 2023 (reference 01) decision is REVERSED. The claimant voluntarily quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style. It is positioned above a horizontal line.

James E. Timberland
Administrative Law Judge

December 20, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.