

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARA A NICHOLSON**

Claimant

**APPEAL NO. 12A-UI-01267-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABBEY CARPETS OF DAVENPORT INC**

Employer

**OC: 01/01/12**

**Claimant: Appellant(1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated January 30, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 14, 2012, in Davenport, Iowa. Claimant participated. The employer participated by William Daley, the president/owner; and Linda Daley, the treasurer/human resources. The record consists of the testimony of Sara Nicholson; the testimony of William Daley; the testimony of Linda Daley; Claimant's Exhibits A-P; and Employer's Exhibits 1-7.

**ISSUE:**

Did the claimant leave her job voluntarily for good cause attributable to the employer?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a retail floor covering sales and service business. The claimant was hired on May 9, 2011, as a part-time sales person. She went to full-time hours in June 2011. The claimant's last day of work was December 8, 2011. She voluntarily quit her job on December 9, 2011.

When the claimant was hired, she received a salary. She could also earn some commissions if her sales were high enough. In August 2011, the employer announced that the claimant and another sales person would be put on a commissions only pay scale. The claimant would receive a draw each month. If commissions exceeded the amount of the draw, the claimant would be paid extra. If commissions were less than the amount of the draw, the claimant would have to repay the employer. The new system went into effect on October 1, 2011. The claimant worked under the new system until the time she quit. She quit because the amount of her draw exceeded the commissions she earned. She did not feel that she could make a living under the new pay system.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

There is no dispute that it was the claimant who initiated the separation of employment. She quit her job because her pay method was changed to commissions only effective October 1, 2011. She was informed of the change in August 2011. The claimant testified that she could not earn a living under the new pay system. A voluntary quit can be with good cause attributable to the employer if there is a substantial change in the conditions of employment. 871 IAC 24.26(1) But an employee acquiesces in a change if he or she does not resign in a timely manner. See Olson v. EAB, 460 N.W.2d 865 (Iowa App. 1990)

The administrative law judge concludes that the change in the claimant's pay scale from a salary to a draw represents a substantial change in the conditions of employment. But the claimant acquiesced in that change by not promptly resigning either upon notification of the change or the effective date of the change, which was October 1, 2011. The claimant worked for over two months under the new pay system. Since she did not promptly resign, her quit cannot be deemed as good cause attributable to the employer. Benefits are denied.

**DECISION:**

The decision of the representative dated January 30, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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