

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY S REEL
Claimant

APPEAL NO. 09A-UI-06804-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET
Employer

**Original Claim: 03/22/09
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated April 17, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 28, 2009. The claimant participated. The employer participated by Mimi Gilbert and Michael Oliphant.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant last worked for the employer on March 15, 2009. The claimant resigned from work on that day. The claimant was hired in January of 2009 to work in a Target store that was just opening. Shortly after he was hired, he was promoted to a specialist position in the electronic department. The claimant received assurance when he was originally hired and when he was promoted that he would not have to work more than an hour after closing except on rare occasions. The claimant worked a number of times that his hours significantly exceeded the hour after closing. The claimant told his supervisor, Mike Oliphant, and his team leader, he could not continue to work the late hours.

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.

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.

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.

The claimant was given assurance that his hours at closing would be occasional, once a week, and that he would not be required to stay beyond an hour except on a rare occasion. The claimant let his supervisors know that he could not continue to work the extra late hours. He was required on a regular basis to work beyond an hour after closing and more often than once a week. The employer was opening a new store and it is understandable that they might have scheduling problems; however, it does not mean that the claimant was not entitled to rely upon the assurances by the employer of the hours he was expected to work.

The administrative law judge holds that the evidence has established that the claimant voluntarily quit for good cause attributable to the employer when the claimant terminated the employment relationship because the employer misrepresented the hours and schedule he was required to work.

DECISION:

The representative's decision dated April 17, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw