

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN G MERRITT**  
Claimant

**APPEAL NO: 07A-UI-08516-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPLIED TECH PRODUCTS CORP**  
Employer

**OC: 07/29/07 R: 12  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Kevin G. Merritt (claimant) appealed a representative's August 23, 2007 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Applied Tech Products Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 19, 2007. The claimant participated in the hearing. Kimberly Pieper appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit for a good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 17, 1995. He worked full time as a press operator on the third shift at the employer's Monticello, Iowa rubber and plastic injection manufacturing facility. His last day of work was the shift ending on the morning of July 20, 2007. He had turned in his notice of resignation on July 10, 2007. His stated reason for quitting was that he was moving to California, which he did in fact do.

In part the claimant determined to leave his job and move to California because he wanted to find a better paying job or a job with greater opportunities for advancement. While the claimant had always worked on third shift, he was tired of doing so and wanted to find a first shift job. Further, on June 18 the claimant had been downsized from a material operator position paying \$10.75 per hour to a press operator position paying \$10.40 per hour as part of a layoff of about 15 employees. The claimant had heard rumors that the facility might be subject to further layoff or cut backs, but prior to his departure there had only been one week where the facility operated only four days rather than five days. There had been no official discussion of any additional layoffs or cut backs, and in fact by the end of July the facility had recalled the employees who previously had been laid off. The final reason the claimant determined to leave his position and

move to California was to help out a friend in California whom he considered as family who had recently lost her spouse.

### **REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

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 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2.

871 IAC 24.25 provides in pertinent part:

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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (2) The claimant moved to a different locality.
- (3) The claimant left to seek other employment but did not secure employment.
- (18) The claimant left because of a dislike of the shift worked.
- (23) The claimant left voluntarily due to family responsibilities or serious family needs.
- (29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

The law presumes a claimant has voluntarily quit with good cause when he quits because of a substantial change in the contract of hire. 871 IAC 24.26(1). In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa court ruled that a 25 percent to 35 percent reduction in wage was, as a matter of law, a substantial change in the contract of hire. The Court in Dehmel cited cases from other jurisdictions that had held wage reductions ranging from 15 percent to 26 percent were substantial. Id. at 703. Based on the reasoning in Dehmel, a 3.3 percent change in the claimant's pay is not substantial for purposes of unemployment insurance benefits. (The difference between \$10.75 an hour and \$10.40 an hour is about 3.3 percent.) Even if the claimant had good personal reasons for leaving his employment, he

has not satisfied his burden to show that any of those reasons are attributable to the employer. Benefits are denied.

**DECISION:**

The representative's August 23, 2007 decision (reference 02) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 20, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/pjs