

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEROY F RHODEN
Claimant

APPEAL NO. 17A-UI-10966-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHC CONSULTING LLC
Employer

OC: 08/13/17
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Leroy Rhoden filed a timely appeal from the October 18, 2017, reference 04, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Rhoden voluntarily quit on June 12, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 14, 2017. Mr. Rhoden participated. Lisa Brackett, Director of Human Resources, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-10967. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits A, B and C into evidence.

ISSUES:

Whether Mr. Rhoden's voluntary quit was for good cause attributable to the employer.
Whether Mr. Rhoden voluntarily quit to accept other employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Leroy Rhoden was employed by CHC Consulting, L.L.C., as a full-time field engineer from August 2016 until June 12, 2017, when he voluntarily quit. Mr. Rhoden last performed work for the employer on May 26, 2017. Mr. Rhoden then commenced an approved vacation from which he was supposed to return on June 12, 2017. Prior to the return-to-work date, Mr. Rhoden notified his supervisor, Vice President Ryan Matthews, that he would not be returning to the employment.

The employer contracts with CenturyLink to design and install Information Technology networking infrastructure in commercial applications. Mr. Rhoden accepted the employment with the understanding that the employment would be full-time. The job paid \$29.00 per hour. Mr. Rhoden was initially assigned to the employer's Cedar Rapids location. Mr. Rhode learned at the start of the employment that he would not actually be working from the office and would instead be working from home or at the jobsite. Throughout the employment, Mr. Rhoden resided in Waterloo and commuted to the employment. As a field engineer, Mr. Rhoden was responsible for going to the prospective installation site to confirm the layout of the site as part of the planning and design process. Mr. Rhoden's duties also included meeting with customers regarding their IT infrastructure needs.

For the first couple months of the employment, the employer provided Mr. Rhoden with full-time employment connected to the Cedar Rapids location. CenturyLink then had a diminished need for the outside contractor work performed by CHC. At that point, CHC no longer had full-time work for Mr. Rhoden connected to the Cedar Rapids location.

Once the amount of work available through the Cedar Rapids location diminished, Mr. Matthews suggested that Mr. Rhoden commence performing work also from the CHC's Des Moines location. Mr. Rhoden accepted that opportunity and began commuting to the Des Moines area as need to continue to receive full-time employment. CHC provided Mr. Rhoden with mileage reimbursement for his commuting expense.

In April 2017, the employer began to have less work for Mr. Rhoden through the Des Moines location. Mr. Rhoden continued to be available for full-time work. Mr. Matthews told Mr. Rhoden that he was having to take work away from the CHC employees local to the Des Moines area in order to provide Mr. Rhoden with work hours. Mr. Matthews remarked to Mr. Rhoden that the employer did not have to pay the Des Moines local employees mileage reimbursement.

Mr. Rhoden has provided paystubs for the period of March 19, 2017 through June 10, 2017. Each of the paystubs is for a two-week period beginning on the Sunday of the first week and ending on the Saturday of the second week. During the period of March 19 through April 1, the employer provided Mr. Rhoden with only 30 hours for the two-week period. During the period of April 2-15, the employer provided Mr. Rhoden with 50 hours for the two-week period. During the period of April 16-29, the employer provided Mr. Rhoden with 49 hours for the two-week period. During the period of April 30 through May 13, the employer provided Mr. Rhoden 47 hours for the two-week period. During the period of May 14-27, the employer provided Mr. Rhoden with 80 hours for the two-week period. In other words, Mr. Rhoden received full-time work during that two-week period. Mr. Rhoden then commenced the two-week vacation from which he did not return.

While Mr. Rhoden was on his two-week vacation from CHC Consulting, he accepted another work opportunity as an independent contractor with Metronet. In other words, the work for Metronet was self-employment. Mr. Rhoden commenced performing work at Metronet in mid-June 2017. Within a couple months into the arrangement with Metronet, that new arrangement ceased to provide full-time work and Mr. Rhoden established the unemployment insurance claim that was effective August 13, 2017.

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.

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

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.

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 weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. There had been substantial changes during the employment that included a change in work location from Cedar Rapids to Des Moines. Mr. Rhoden remained in the employment for several additional months following the change in location and acquiesced in that change in the conditions of his employment. While there had been a sustained dip in available work hours, the work hours during the period of March 19 through May 13, the employer was once again providing Mr. Rhoden with full-time work effective the week that began May 14. Mr. Rhoden worked the full-time hours for two-weeks, commenced his vacation, and never returned. The fact that hours had returned to full-time prevents this from being a quit due to substantial changes in the contract of hire. Because Mr. Rhoden left to pursue a self-employment venture as an independent contractor, rather than becoming an employee of another employer, Mr. Rhoden's voluntary quit cannot be deemed a voluntary quit to accept other employment.

Mr. Rhoden voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Rhoden is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Rhoden must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The October 18, 2017, reference 04, decision is affirmed. The claimant voluntarily quit the employment effective June 12, 2017 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs