

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY M KING**  
Claimant

**APPEAL NO. 12A-UI-11213-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANTAGE SALES & MARKETING LLC**  
Employer

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

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Amy King filed a timely appeal from the September 10, 2012, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on October 11, 2012. Ms. King participated. Chris Scheibe of TALX represented the employer and presented testimony through Ashley Evans, human resources generalist, and Robert Black, regional operations manager.

**ISSUE:**

Whether Ms. King's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Amy King started her employment with Advantage Sales & Marketing in September 2011. Her duties involved going to retail grocery and discount stores to set up candy displays and selling candy to the retailers. Ms. King was hired for a part-time position. Ms. King's assigned geographical area was 100 miles north and south of Sioux City. Ms. King used her own car to get to and from stores in her assigned area. The employer reimbursed Ms. King 37 cents per mile driven for her fuel expense. The employer did not compensate Ms. King for fuel used for the first and last 20 to 30 miles driven during each day worked.

In 2012, the employer notified Ms. King that the employer was eliminating part-time positions and that Ms. King would have to move into a full-time position if she wished to remain with the employer. Ms. King elected to continue in the employment in a full-time position. Ms. King received an hourly wage of \$12.00. Ms. King received that wage while she was driving to and from her assigned stores and while she was performing work at those stores. Ms. King's full-time status was effective February 27, 2012. Ms. King's assigned geographical area remained somewhat the same. However, Ms. King was assigned to servicing only Wal-Mart stores. Two times per week, Ms. King had to travel from her home base in Sioux City to service a Wal-Mart store in Norfolk, Nebraska. While Ms. King asserts the trip was 100 miles each way, 400 miles per week, that distance was likely somewhat less than that, but still substantial. It was still within 100 miles of Sioux City and the fuel expense for all but the first and last 20 to

30 miles driven were reimbursed by the employer. While Ms. King asserts she was driving 4,000 miles per month for the employer, that figure is likely an exaggeration. Ms. King continued to work for the employer on a full-time basis until July 30, 2012, when she voluntarily quit.

In July 2012 Ms. King notified her immediate supervisor, Trevor Mulholland, retail supervisor, that she could not continue to work because of the mileage being put on her vehicle and her belief that the mileage reimbursement did not cover her the cost of frequent oil changes, which Ms. King asserts were needed every three weeks, or repair costs, if her vehicle broke down. Mr. Mulholland encouraged Ms. King to continue in the employment, but accepted her resignation. Mr. Mulholland asked for a 30-day notice. On July 10, 2012, Ms. King provided the employer with written notice that July 30, 2012 would be her last day.

Ms. King had started a second job in January 2012 as a waitress at a diner. When Ms. King gave her quit notice to Mr. Mulholland, she did so under the belief that she would be able to increase her waitressing hours at the diner. However, the diner closed on July 9, 2012, right around the same time Ms. King gave her quit notice to Advantage Sales and Marketing. After Ms. King had submitted her resignation to Advantage Sales and Marketing, and after that employer had accepted her resignation, Ms. King approached Mr. Mulholland about the prospect of staying a short while longer in light of the diner closing. Mr. Mulholland told Ms. King that she would need to reapply. Ms. King did not reapply.

#### **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.

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 871 IAC 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).

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.

"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 indicates that the changes in the conditions of the employment came months before Ms. King submitted her resignation. The change from part-time to full-time status was effective in February, but Ms. King did not leave until the end of July. The change in store assignments and route was in place by the end of March. The fuel reimbursement remained the same. The pay rate did not diminish. The administrative law judge concludes that Ms. King acquiesced in the changes in the conditions of the employment associated with her move from part-time to full-time by continuing in the employment at least four months after the changes had occurred.

The evidence does not establish intolerable or detrimental working conditions. The nature of the position from start to finish was route sales and service. The employer's addition of the trip to Norfolk did not create intolerable working conditions. The employer's mileage reimbursement amount \$0.37 per mile, was greater than a reasonable person would expect Ms. King's fuel expense to be. In other words, the reimbursement amount factored in other associated vehicle expenses. Ms. King had used her vehicle for work since the beginning of the employment. The employer did not decide what vehicle Ms. King had to use. Ms. King decided that. If Ms. King desired a more fuel-efficient, reliable vehicle, it was presumably within her power to obtain the same. Nothing about her vehicle situation created intolerable or detrimental working conditions. The weight of the evidence indicates that Ms. King exaggerated the driving distance to Norfolk and her monthly miles.

In the final analysis, the weight of the evidence indicates that Ms. King voluntarily quit the employment due to dissatisfaction with certain aspects of the employment. In other words, the quit was for personal reasons and not for good cause attributable to the employer. The quit was not a quit to accept other employment. See Iowa Code section 96.5(1)(a). The weight of the evidence indicates that Ms. King learned the employment at the diner was done right about the same time she submitted her resignation to Advantage Sales & Marketing.

Based on the voluntary quit, Ms. King is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

**DECISION:**

The Agency representative's September 10, 2012, reference 02, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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