

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MILTON R KELLEY
Claimant

APPEAL NO: 15A-UI-07114-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/31/15

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Milton R. Kelley (claimant) appealed a representative's June 16, 2015 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 23, 2015. The claimant participated in the hearing. The employer's representative received the hearing notice and responded on July 21, 2015 by registering the name and number of a Sarah Ochoa into the Appeal's Bureau's conference call system to participate at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Ms. Ochoa was not available; therefore, the employer did not participate in the hearing. 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on August 5, 2003. He worked full time as a master mechanic at the employer's Storm Lake, Iowa pork processing facility, working eight-hour shifts on a day schedule, with rotating weekends. His last day of work was April 17, 2015.

The claimant was scheduled to return on April 24. Through his brother he informed his supervisor that he was not going to return to work. His reasons for quitting were that the employer was changing the work schedule to be 12-hour shifts from 4:00 a.m. to 4:00 p.m., and that the employer was assigning work that could not be safely completed in one shift, leading to

shortcuts that were jeopardizing safety. The claimant was nearly injured because of such short cuts in an incident in mid-March, and a similar scenario occurred on about April 12.

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. Where a claimant gives several different reasons for leaving employment, all stated reasons which might have combined to give the claimant good cause to quit must be considered in determining whether any of those reasons alone or in combination constituted good cause attributable to the employer. *Taylor v. IDJS*, 362 N.W.2d 534 (Iowa 1985).

A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. Rule 871 IAC 24.26(1). A “contract of hire” is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a “contract of hire” to exist. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). A change in scheduled shifts can be a substantial change in a contract of hire.

Intolerable or detrimental working conditions are good cause for quitting attributable to the employer. Rule 871 IAC 24.26(4). The claimant has demonstrated that a reasonable person would find the employer’s work environment detrimental or intolerable. *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). There has also been a substantial change in the contract of hire. Benefits are allowed.

DECISION:

The representative’s June 16, 2015 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css