

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD H WILSON
Claimant

APPEAL NO. 07A-UI-07666-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENNOX MFG INC
Employer

**OC: 12/03/06 R: 02
Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 2, 2007, reference 03, that concluded he had voluntarily left employment without good cause attributable to the employer. A telephone hearing was held on August 27, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Brent McDowall participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time as an assembler from February 26, 2007, to July 13, 2007. The employer has three work shifts. When he was hired, the claimant informed the person in personnel who hired him that he could only work on the first or the third shift because of his family situation. The personnel supervisor informed him that it would not be a problem because there were openings on the third shift, and he was hired to work on the third shift.

The claimant worked on the third shift for about a month, which involved working from 11:00 p.m. to 7:00 a.m. He was then transferred to the second shift, which involve working from 3:30 p.m. to midnight or 2:00 a.m. because of lack of work on the third shift. The claimant informed the staffing coordinator that he had not been hired for the second shift and did not want to work the second shift due to his family situation. The staffing coordinator told him to check back later to see if there were any openings. A couple of weeks later, he checked back and was told there were no third or first shift openings. The employer operates under a union contract that requires that employees bid on open positions, which are awarded based on seniority. When the claimant told his supervisor that he would have to quit if he was not moved to a different shift, the supervisor said that if the employer really wanted to keep him, they would transfer him back to the third shift.

As of July 2007, the claimant was still working on the second shift. His wife was upset that he was not home during the evenings for his family and threatened to divorce him if he did not change shifts. The clamant quit his job because the employer would not change his shift.

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 3, 2006. He reopened that claim during the week of July 8, 2007. The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

The preponderance of the evidence establishes that the claimant was hired to work on the third shift after he told the person in personnel that he could only work the first or third shift. Since he was hired with that understanding, the employer substantially changed the terms of employment when he was transferred to the second shift. He attempted to resolve the matter and informed the employer that he would have to quit if his shift was not changed. He quit employment with good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated August 2, 2007, reference 03, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw