

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON K JURGENSON
Claimant

APPEAL NO. 09A-UI-00502-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

**OC: 12/07/08 R: 02
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Sharon Jurgenson filed an appeal from a representative's decision dated January 6, 2009, reference 01, which denied benefits based upon her separation from Kwik Trip, Inc. After due notice was issued, a hearing was held by telephone conference call on January 28, 2009. Ms. Jurgenson participated personally. Although duly notified, the employer failed to respond to the hearing notice and did not participate.

ISSUE:

At issue in this matter is whether the claimant quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from May 6, 2008, until November 28, 2008, when she voluntarily quit employment due to a material alteration of the original agreement of hire. Ms. Jurgenson held the position of full-time cashier/kitchen worker and was paid by the hour.

The claimant left her employment with Kwik Trip, Inc., after the employer unilaterally changed the claimant's working hours to rotating hours, which caused the claimant to perform heavy lifting duties when assigned to nighttime work. When hired by company management, the claimant was specifically told that she was being hired to work as a second-shift cashier. As a second-shift cashier, the claimant would not be subject to rotating hours and would not be required to perform heavy lifting. Subsequently, the claimant accepted an offer from her store manager to work 8:00 a.m. until 4:00 p.m. on a permanent basis and accepted the new daytime working hours.

After the claimant's previous manager left and a new manager was assigned, the claimant and other workers were assigned rotating hours, which affected the claimant's health and her ability to accept other part-time employment to supplement her income. Ms. Jurgenson complained to her store manager as well as to the district manager before leaving employment and specifically indicated that she would be required to leave if the employer did not follow the original agreement of hire. When the rotating schedules continued, Ms. Jurgenson left her employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Jurgenson left her employment with good cause attributable to the employer. It does.

The evidence in the record establishes that the claimant specifically was told at the time of hire that she was being hired permanently to work as a second-shift cashier. In that full-time position, the claimant would not be required to work rotating shifts or to perform heavy lifting associated with stocking and unloading of company supply trucks. Subsequently, the claimant was offered and accepted the full-time position of daytime cashier working 8:00 a.m. until 4:00 p.m. and again was assured that the hours were permanent. When the previous manager left and a new manager was assigned, the claimant was required to work rotating hours, which affected her health and her ability to accept part-time employment to supplement her income. The claimant followed a reasonable course of action by bringing her dissatisfactions both to the attention of her store manager as well as the district manager and informed them of the original agreement of hire. The claimant considered the unilateral change by the employer to be a substantial change in the original agreement under which she accepted employment and left her work when the rotating shifts continued. The claimant participated personally and provided sworn testimony in this matter. Although given the opportunity to do so, the employer elected not to participate.

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.

For the reasons stated herein, the administrative law judge concludes the claimant has sustained her burden of proof in establishing that she left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 6, 2009, reference 01, is reversed. The claimant voluntarily quit employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw