

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

<b>ODELL NEBO</b> Claimant  <b>LABOR GUYS LLC</b> Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div><b>APPEAL NO. 19A-UI-06485-JTT</b>  <b>ADMINISTRATIVE LAW JUDGE DECISION</b></div> <div><b>OC: 07/21/19</b> <b>Claimant: Respondent (1)</b></div>
--	---

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 12, 2019, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant's July 12, 2019 separation was for good cause attributable to the employer. After due notice was issued, a hearing was held on September 9, 2019. Claimant Odell Nebo did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Juan Miranda represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit 1 into evidence. The administrative law judge took official notice of the documents submitted for and created in connection with the fact-finding interview for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud and/or intentional misrepresentation to gain a favorable decision.

**ISSUES:**

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

Whether the employer's account may be charged for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Labor Guys, L.L.C. is a staffing agency that provided workers to PAE in Urbandale. Odell Nebo was employed by Labor Guys from 2017 until July 15, 2019 on a full-time basis and worked in a long-term assignment at PAE throughout the employment. Throughout the employment, Ms. Nebo was assigned to the second shift. Her work hours were 3:00 p.m. to 11:00 or 11:30 p.m., Monday through Friday. Effective July 17, 2019, PAE eliminated the second shift work at its Urbandale location in preparation for transferring all of the Urbandale work to Kansas City, Missouri. As the second shift work was coming to an end, the employer offered Ms. Nebo the opportunity to move to the first shift for a brief period until PAE shut down production on the first shift. The first shift hours were 6:00 a.m. to 2:30 p.m. The pay would remain the same. Ms. Nebo elected not to move to the first shift. During the last week of the employment,

Ms. Nebo was on an approved vacation. Ms. Nebo could have worked two more days on the second shift following her vacation, but advised the employer she would not be returning for those two additional shifts. Ms. Nebo separated from the PAE assignment and from Labor Guys effective July 15, 2019. Labor Guys did not have any other clients in the Des Moines metropolitan area. Labor Guys' next closest client was an hour away from Des Moines. According to Iowa Workforce Development records, Ms. Nebo resides in Des Moines.

## **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.

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 evidence in the record establishes a July 15, 2019 separation that was for good cause attributable to the employer. As of July 17, 2019, the employer had no more work for Ms. Nebo on the second shift. The second shift work hours were the established work hours. The employer's proposed change in work hours to the first shift hours constituted a substantial change in the conditions of the employment. Ms. Nebo's decision to separate from the

employment two days before the second shift work ceased does not alter the nature of or the basis for the separation. Ms. Nebo eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The August 12, 2019, reference 01, decision is affirmed. The claimant's separation from the employment was for good cause attributable to the employer. The separation was effective July 15, 2019. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/rvs