

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIRK MCCURRY
Claimant

APPEAL NO. 08A-UI-08174-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

**OC: 01/20/08 R: 02
Claimant: Appellant (2)**

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Kirk McCurry (claimant) appealed an unemployment insurance decision dated September 9, 2008, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Jeld-Wen, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 29, 2008. The claimant participated in the hearing. The employer participated through Troy Dillon, Production Manager; Chris Juni, Safety and Human Resources Manager; and employer representative Kelly Tackett. 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:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time roll form operator from November 22, 2004 through August 19, 2008, when he voluntarily quit due to a change in the contract of hire. In January 2008, all employees' retirement plans were being administered by an outside company and the claimant's retirement amount would no longer increase but would remain stable at \$173.00 per month. He was not happy with that change but voluntarily quit after his incentive pay changed. The claimant was hired on the basis that he could earn incentive pay up to 130 percent. If he performed well throughout the week and produced over 130 percent, he could get paid an extra 30 percent pay. If he produced more than that, he still only earned an extra 30 percent and if he produced 110 percent, he was paid 10 percent more. He did not receive any incentive if he produced less than 100 percent. However, as of June 2008, each employee was no longer in control of his or her incentive pay. The incentive pay was based on whether there was a plant wide scrap of over one percent each week. If there was, no one earned any incentive pay that week regardless of his or her personal

performance. The claimant quit his employment after he did not receive any incentive pay one week because the plant wide scrap was over one percent.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2.

The claimant quit his employment on August 19, 2008 due to a change in the contract of hire. The law presumes a claimant has left employment with good cause when he quits because of a change in the contract of hire. 871 IAC 24.26(1). A contract of hire need not be an explicit written contract but can be established by schedule, custom or otherwise. A "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.

The changes to the employer's retirement and incentive programs are considered to be substantial changes in the claimant's contract of hire. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). The claimant quit his employment after he did not receive any incentive pay for one week because the plant wide scrap was over one percent. The claimant's separation was with good cause attributable to the employer and benefits are allowed.

DECISION:

The unemployment insurance decision dated September 9, 2008, reference 01, is reversed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw