

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL A WARREN
Claimant

APPEAL NO. 09A-UI-01467-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST RECOVERY INC
Employer

**OC: 11-09-08 R: 02
Claimant: Appellant (2)**

871 IAC 24.26(1) – Voluntary Leaving – Change in Contract of Hire

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 27, 2009, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on February 18, 2009. The claimant did participate and was represented by Corey J. L. Walker, Attorney at Law. The employer did participate through Debra Williams, Secretary.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a laborer, full-time, beginning February 7, 2008, through January 9, 2009, when he voluntarily quit.

The claimant was hurt on the job on August 19, 2008 and was off work or working limited hours due to doctor's restrictions until December 8, 2008, when he was released to return to work without restrictions. From December 8, 2008, until he quit on January 9, 2009, the claimant was only working two hours per day due to a slow down in the employer's business. The claimant continued to work at 10 hours per week until he quit because he was not getting the usual 40 hours he was accustomed to and hired to work. The claimant did not know that the employer was going to move him to a driving position that would have generated forty hours per week of work for him once his doctor determined that he reached maximum medical improvement and had passed a functional capacity examination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with 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.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. EAB*, 433 N.W.2d 700 (Iowa 1988). The claimant's work hours were cut from 40 per week to 10 per week due to a slow down in the employer's business. Such a reduction of hours is a change of the original terms of hire and is considered substantial. The claimant was not required to keep working while the employer determined that he was able to work more hours once he was released to return to work without restrictions. Nor was the claimant required to continue working reduced hours in the hope that sometime in the future his hours would be increased or his job duties changed such that more hours of work would be available for him. Thus, the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The January 27, 2009, reference 04, decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw