

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK H DILLAVOU
Claimant

APPEAL NO. 14A-UI-10391-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUPERIOR WASH INC
Employer

OC: 04/06/14
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

871 IAC 24.27 – Voluntary Quit from Part-time Employment

STATEMENT OF THE CASE:

Patrick Dillavou filed a timely appeal from the September 24, 2014, reference 02, decision that disqualified him for benefits based on wage credits from part-time employment with Superior Wash, Inc., but that allowed reduced benefits based on other base period employment. The decision had also relieved Superior Wash, Inc., of liability for benefits paid to the claimant. After due notice was issued, an in-person hearing was held in Mason City on October 27, 2014. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-10392-JT. Mr. Dillavou participated. Randy Mumm represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits A and B and Department Exhibits D-1, D-2 and D-3 into evidence.

ISSUES:

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

Whether the claimant's voluntary quit disqualifies him for unemployment insurance benefits.

Whether the quit was from part-time employment.

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: Patrick Dillavou was employed by Superior Wash, Inc., as a part-time wash attendant from September 2013 until February 14, 2014, when he voluntarily quit. Mr. Dillavou's immediate supervisor was Randy Mumm, the business owner. Mr. Dillavou had taken an extended vacation from the part-time employment. The vacation started on or about December 20, 2013 and Mr. Dillavou returned to the employment on or about February 11, 2014. Before Mr. Dillavou took his extended vacation, he had worked 10 hours per week, 8:00 a.m. to 10:00 a.m., Monday through Friday. During Mr. Dillavou's extended absence, the employer

found it necessary to hire another part-time wash attendant. Upon Mr. Dillavou's return from vacation, the employer told Mr. Dillavou that he and the new employee could work out between them the hours that each desired to work. Both Mr. Dillavou and the other employee had other employment. The employer at no time told Mr. Dillavou that his hours would be reduced as a result of the employer wash attendant's hours. The employer at no time told Mr. Dillavou that he could not continue to work the 8:00 a.m. to 10:00 a.m. schedule that he had previously worked. Mr. Dillavou's other employment started at 11:00 a.m. Mr. Dillavou made no attempt to discuss work hours with the other employee and just assumed that the presence of the new employee meant that his work hours were being cut. On February 14, 2014, Mr. Dillavou notified the employer that he was quitting the employment. Mr. Dillavou intended to provide a two-week notice, so that his last day would be February 28, 2014. However, the employer elected to end the employment that day.

Mr. Dillavou did not establish a claim for unemployment insurance benefits until April 6, 2014.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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 weight of the evidence in the record fails to establish a change in the contract of hire. The employer never notified Ms. Dillavou of a change in the contract of hire. The employer merely instructed Mr. Dillavou to discuss work hours with the other new attendant to see whether the pair could come to an agreement about which work hours each would work. Mr. Dillavou declined to take any such steps and elected instead to separate from the employment. The evidence in the record establishes a voluntary quit from part-time employment that was without good cause attributable to the employer. The employer's account will not be charged. Effective April 6, 2014, Mr. Dillavou was disqualified for benefits based on wage credits earned through the part-time employment with Superior Wash until he earned 10 times his weekly benefit amount from other employment subsequent to his February 14, 2014 separation from Superior Wash.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Under the administrative rule, effective April 6, 2014, Mr. Dillavou remains eligible for benefits based on base period wage credits from employment other than Superior Wash provided he meets all other eligibility requirements.

This matter has already been remanded for redetermination of the claimant's benefit eligibility. That redetermination gave rise to the overpayment decision at issue in the companion appeal.

DECISION:

The September 24, 2014, reference 02, decision is affirmed. Effective February 14, 2014, the claimant voluntarily quit the part-time employment without good cause attributable to the employer. The employer's account will not be charged. Effective April 6, 2014, the claimant was disqualified for benefits based on wage credits earned through the part-time employment with Superior Wash until he earned 10 times his weekly benefit amount from other employment subsequent to his February 14, 2014 separation from Superior Wash. Effective April 6, 2104, the claimant remains eligible for benefits based on base period wage credits from employment other than Superior Wash provided he meets all other eligibility requirements. The claimant's benefit eligibility has already been redetermined.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs