

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**RONALD D HOUSTON**  
Claimant

**APPEAL NO. 19A-UI-02006-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AG PARTNERS LLC**  
Employer

**OC: 02/03/19**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.3(7) -- Overpayment

**STATEMENT OF THE CASE:**

Ag Partners, LLC, the employer, filed a timely appeal from a representative's unemployment insurance decision dated February 27, 2019, reference 01, which held the claimant, Ronald D. Houston, eligible for unemployment insurance benefits, finding that the claimant quit work on February 3, 2019 because of a change in the contract under which he was hired. After due notice was provided, a telephone hearing was held on March 21, 2019. Claimant participated. The employer participated by Mr. Cody Elliott, Mr. Heath Karns, and Mr. Doug Pittman. Claimant's Exhibit 1, Employer's Exhibits A, B, C, D and Department Exhibits D-1 were admitted into the hearing record.

**ISSUES:**

The first issue is whether Mr. Houston left employment with good cause attributable to the employer.

The second issue is whether the claimant has been overpaid job insurance benefits.

The third issue is if Mr. Houston has been overpaid job insurance benefits, is whether the claimant is liable to repay the overpayment or whether the employer should be held chargeable based upon the employer's participation in the fact-finding interview.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Ronald Houston was employed by Ag Partners, LLC from September 14, 2012 until February 3, 2019, when he resigned by text message and his resignation was accepted by the employer. Mr. Houston worked as a full-time pea truck driver and was most recently paid under a performance pay tier level plan that had been implemented by the company in September 2018. Under the performance pay plan, more pay was available to drivers who made more trips for the employer during designated pay periods and also met a number of other work-related expectations that had been set forth by the employer in a meeting held with drivers in September 2018. Under the plan, truck drivers who completed fewer trips in designated periods

would receive proportionally less pay. Under the plan, drivers were compensated for waiting time at company mills, if the waiting time exceeded one hour. Employees were required to note the additional waiting time on company logs for payment.

Mr. Houston was informed of the change in the method of pay in September 2018. Although Mr. Houston did not support the change and disagreed with it, he elected to remain employed by the company at the time the change was implemented in September 2018, and remained employed until February 3, 2019, when he quit employment via text message. On February 3, 2019, one of the company's mills was not in operation and because of it, Mr. Houston and other drivers, were required to wait an extended period of time before the company was able to load their trucks for delivery. Mr. Houston became increasingly upset at the wait time, because under the old pay plan, he would have been receiving hourly pay at his former full rate of pay of \$18.75 per hour for all time spent performing services for the company, whether he was driving or waiting for product to be loaded. Mr. Houston exchanged text messages with Mr. Elliott, who was on duty that day, and quit his job via text message due to dissatisfaction the change in the method of pay that had been implemented some five months previously.

The employer considered Mr. Houston to be a good worker but had previously issued him a number of disciplinary warnings based upon Mr. Houston's attitude and demeanor he had shown towards other company workers and management. The company accepted Mr. Houston's resignation, but also considered it to be another example of insubordination because he made a negative reference to his supervisor in doing so.

#### **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.

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 Section 96.5(1). "Good cause" need not be based on fault or wrong-doing on the part of the employer, but may be attributable to the employment itself. *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787 (Iowa 1956).

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.

Mr. Houston quit his employment on February 3, 2019 due to a change in the agreement of hire. A change in the agreement of hire means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Department 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 these cases, Iowa courts looked at the impact on the claimant, rather than the employer's motivation. In the case at hand, the employer changed the claimant's method of pay from a set hourly rate to pay prorated on performance itself and a number of other work factors in that the employer deemed important for pay purposes.

There is a presumption when a claimant has left employment with good cause if he or she quits because of a change in the agreement of hire. However, an employee is considered to have acquiesced to the change in the agreement of hire if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa App. 1990).

In the case at hand, the change in the method of pay was implemented by Ag Partners, LLC in September 2018. Although Mr. Houston did not like the change, he did not quit at that time, but continued working for approximately five additional months before quitting employment on February 3, 2019.

Although sympathetic to the claimant's situation, it is clear that Mr. Houston had acquiesced to the changes in the agreement of hire when he continued to work for five additional months before quitting. Because the claimant had acquiesced to the change, he has failed to establish good cause for leaving attributable to the employer at the time of job separation. Accordingly, the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$2082.00 since opening a claim for benefits with an effective date of February 3, 2019 for the benefit week ending dates February 9, 2019 through March 16, 2019. The administrative record also reflects that the employer did not participate in the fact-finding interview.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and the employer failed to participate in the fact finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

**DECISION:**

The representative's unemployment insurance decision dated February 27, 2019, reference 01, is reversed. The claimant left work without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$2082.00. Claimant is not liable to repay the overpayment to the agency and the employer's account shall be charged based upon the employer's failure to participate in the fact-finding interview.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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