

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DJ J WEAVER
Claimant

APPEAL NO. 08A-UI-10097-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTH END AUTO WRECKING INC
Employer

**OC: 09/28/08 R: 04
Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 21, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 4, 2008. Roger Kunde, President, represented the employer and presented additional testimony through Scott Kunde, Vice President. Claimant DJ Weaver participated and presented additional evidence through Keith Bodley and John Fuller. The hearing in this matter was consolidated with the hearing in Appeal Number 08A-UI-10128-JT, concerning claimant Keith Bodley and the same employer, and Appeal Number 08A-UI-10390-JT, concerning claimant John Fuller and the same employer. Exhibits One through Seven were received into the record. All Exhibits for the consolidated hearing are located in Appeal Number 08A-UI-10128-JT, concerning claimant Keith Bodley.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is an auto-dismantling/auto-salvage enterprise.

DJ Weaver was employed by North End Auto Wrecking as a full-time auto dismantler on two occasions. Mr. Weaver's most recent period of employment started on April 3, 2006 and ended on October 1, 2008, when he voluntarily quit. Mr. Weaver's wage was \$10.00 per hour.

Mr. Weaver worked with three other auto-dismantlers. Two of Mr. Weaver's full-time coworkers voluntarily quit their employment on the same day Mr. Weaver quit. Dismantler Keith Bodley had also worked for the employer during two separate periods. Mr. Bodley's hourly wage was \$10.00. Dismantler John Fuller began working for the employer on August 6, 2007. Mr. Fuller's wage was \$11.00 per hour. All three of these dismantlers had regular, Monday through Friday work hours that started at 8:00 a.m. and ended at 5:30 p.m. Mr. Fuller occasionally requested additional overtime hours, which the employer made available to him on Saturdays.

Roger Kunde is company President. Scott Kunde is Roger Kunde's son and is company Vice President. Jody Kunde is Roger Kunde's daughter and works as office manager. Roger Kunde and Scott Kunde shared supervisory responsibility over the work performed by the auto-dismantlers. Roger Kunde did not generally work in the shop area, but would walk through as needed.

Each dismantler was responsible for tracking the time he spent of dismantling a particular vehicle. The dismantler would do this by writing information on an appropriate form kept in the work area. Because of the nature of the work and the location of the form, grease and/or oil often made its way onto the form. Though the form was generally legible, there were times when reading a particular area of the form became a challenge. The dismantler would indicate when he started work on the vehicle and when he finished work on the vehicle. For each vehicle to be dismantled, the employer provided the dismantler with a separate document that listed parts to be removed and salvaged from the vehicle. The parts to be removed depended on the make, model and condition of the vehicle, as well as the condition of individual parts of the vehicle.

Roger Kunde believed that the auto-dismantlers were not working to their full potential and spent too much time socializing. Mr. Kunde was also concerned that the dismantlers did not use sufficient care to avoid getting grease and oil on the tracking forms. To address these concerns, Roger Kunde decided to change the compensation structure. Rather than paying an hourly wage, Roger Kunde decided he would implement a piece-work pay structure. No longer would the dismantlers receive an hourly wage. Instead, the dismantlers would receive a per-car or per-truck payment. The time it actually took to dismantle a car or truck depended on the make, model, condition of the vehicle, and the employer's designation of what parts were to be salvaged from the vehicle.

A couple weeks before all three employees voluntarily quit, Mr. Fuller had been working overtime hours on a Saturday. Roger Kunde took the opportunity to talk briefly with Mr. Fuller about his idea of transitioning from hourly compensation to piece-work compensation. Mr. Kunde told Mr. Fuller that he had used records regarding Mr. Fuller's dismantling work to establish an average length of time it would take to dismantle a car or truck and had come up with a per-car and per-truck fee. Mr. Kunde told Mr. Fuller that based on Mr. Kunde's calculations, Mr. Fuller could earn an additional \$28.00 per week under a piecework pay structure. Mr. Kunde indicated that he was only contemplating the change in pay structure at that time. Mr. Fuller gave general consent to the idea of making more money, but expressed concern that he would make less.

Mr. Fuller discussed with the other dismantlers the fact that the employer was contemplating going to a piece-work compensation plan. The employer did not approach Mr. Bodley or Mr. Weaver with the sort of information the employer shared with Mr. Fuller.

On the morning of October 1, 2008, Roger Kunde walked into the shop area where Mr. Fuller, Mr. Bodley, and Mr. Weaver worked. Mr. Kunde told Mr. Fuller to make sure his records were clear because as of that day the dismantlers were going to a per-car pay structure. Mr. Fuller asked Mr. Kunde what exactly the pay structure would be. Mr. Fuller was concerned that he would be unable to pay his child support. Before Mr. Fuller could get an answer, Mr. Kunde moved nearby and repeated the same information to Mr. Bodley. Mr. Fuller and Mr. Bodley were near enough to hear what Mr. Kunde said to the other. Mr. Kunde then moved on to speak with Mr. Weaver. Mr. Fuller was still concerned that he had not heard what exactly the pay structure would be. Mr. Fuller and Mr. Bodley followed Mr. Kunde to the next bay. Mr. Kunde told Mr. Weaver to make sure his records were clear because the dismantlers were

going to a per-vehicle pay structure. Mr. Weaver is a single parent and concluded it was unacceptable to continue working for the employer without knowing what he would be paid. Mr. Kunde then moved on to the fourth dismantler, Matt. Mr. Fuller followed. Mr. Fuller asked what exactly the pay structure was going to be. Mr. Kunde did not answer. Mr. Kunde then took a call on his cell phone and exited the workplace. Mr. Kunde did not respond to Mr. Fuller's question. Mr. Kunde did not return after his call ended to respond to Mr. Fuller's question.

Mr. Fuller, Mr. Bodley, and Mr. Weaver each had the same understanding of what Mr. Kunde had conveyed. Each understood Mr. Kunde to have issued a directive that the pay structure would change immediately. Mr. Bodley and Mr. Weaver had virtual no information about what they might expect to be paid. Mr. Fuller had minimal details about the new pay structure, based on the brief conversation two weeks earlier. Mr. Weaver and Mr. Bodley packed their tools. Mr. Fuller, Mr. Weaver, and Mr. Bodley went together to notify office manager Jody Kunde that they were quitting the employment. As the three were exiting together, then notified Scott Kunde that they were quitting the employment. After Mr. Weaver, Mr. Bodley and Mr. Fuller left, Roger Kunde returned to the workplace and learned that the three employees had quit. Mr. Fuller returned days later for the limited purpose of collecting his tools.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

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.

"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).

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The greater weight of the evidence in the record establishes that on October 1, 2008, the employer told each dismantler that the pay structure was changing immediately to a per-vehicle pay structure. The weight of the evidence indicates that Mr. Bodley, Mr. Fuller, and Mr. Weaver each reasonably concluded that the change was going into effect immediately. The weight of the evidence indicates that none of the dismantlers knew what he would be paid under the new, piece-work pay structure. The employer immediately placed each dismantler in the position of not knowing what he would be paid for his labor. For each dismantler, this constituted a significant change in the conditions of the employment. The weight of the evidence indicates that each of the three dismantlers in question elected to immediately quit the employment, rather than acquiescing in the changed conditions.

Based on the evidence in the record and application of appropriate law, the administrative law judge concludes that Mr. Weaver's voluntary quit was for good cause attributable to the employer. Accordingly, Mr. Weaver is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Weaver.

DECISION:

The Agency representative's October 21, 2008, reference 01, decision is affirmed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs