

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH CAVAN**  
Claimant

**APPEAL NO. 20A-UI-07796-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OSCEOLA FOOD LLC**  
Employer

**OC: 03/01/20**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 6, 2020, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged, based on the deputy's conclusion that the claimant voluntarily quit on February 26, 2020 with good cause attributable to the employer and due to a change in the contract of hire. After due notice was issued, a hearing was held on August 26, 2020. Claimant Joseph Cavan participated. Dena Shelton of Employers Unity represented the employer and presented testimony through Roberto Luna. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 2 and 3 into evidence.

**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 claimant was hired as a full-time Quality Control Auditor. He began the employment on November 11, 2019. The claimant's work hours in the Quality Control Auditor position were 6:00 p.m. to 2:30 a.m., Monday through Friday. The claimant was required to work overtime hours as needed. The claimant's base pay in the Quality Control Auditor position was \$17.58 an hour, to which the employer added a 30-cent shift differential to make the hourly wage \$17.88. The Quality Control Auditor duties consisted of ensuring packaged product was in good condition, doing hourly quality checks, verifying labels and box coding. The claimant performed the Quality Control Auditor duties until February 14, 2020. On that day, the Human Resources Manager met with the claimant to discuss the claimant's three-month evaluation. The claimant's supervisor had noted some performance lapses during the first three months of the employment. The human resources manager told the claimant that he was not cut out to be a Quality Control Auditor, that he was done in that position, and that the employer wanted to move him to a production position that would pay \$1.00 less per hour and that would provide similar work hours. The new position paid \$16.35 per hour, which was \$1.23 or 7% less than the Quality Control position. The work hours were similar in that they were overnight hours, but the

shifts lasted 12-hours, lasted until 6:00 a.m. were on a 3 days on, 2 days on, 2 days off schedule. The claimant asked for time to consider the employer's request that he move to the production position. The claimant subsequently agreed to move to the production position, but requested a week off before he started in the new position. The employer approved the request.

On February 25, 2020, the claimant worked his first day in the production position. The claimant perceived that his new supervisor did not seem to know how and where he was supposed to use the claimant. The claimant perceived that some of the work he was asked to perform was dangerous for him to perform due to his lack of training. The claimant returned for a second day of work, but then left before the end of the shift. The claimant did not return or make further contact with the employer. The employer continued to have work for the claimant in the production position. When the claimant did not return, the employer began documenting no-call/no-show absences. On March 25, 2020, the employer documented a separation from the employment.

### **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.

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).

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Iowa Administrative Code rule 871-24.26(1) and (2) 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.

24.26(2) The claimant left due to unsafe working conditions.

"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 evidence in the record establishes a February 26, 2020 voluntary quit for good cause attributable to the employer. This was not a run-of-the-mill three-day no-call/no-show quit, but instead was a quit due to substantial changes in the conditions of the employment. The weight of the evidence does not support the employer's assertion that the claimant could have continued in the Quality Control Auditor position. The circumstances surrounding the February 14 meeting indicate otherwise. The new position involved a substantial, 7% pay cut. The new position involved a substantial change in the work hours and in the work duties. Less than two days into the new, less desirable position, the claimant elected to leave the employment rather than to acquiesce by continuing in the changed position. The weight of the evidence does not support the claimant's assertion that the new work duties were unsafe. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The July 6, 2020, reference 01, decision is affirmed. The claimant quit the employment on February 26, 2020 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.



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James E. Timberland  
Administrative Law Judge

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October 13, 2020  
Decision Dated and Mailed

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