

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

SHAWN A COOK

Claimant,

and

DES STAFFING SERVICES INC

Employer.

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HEARING NUMBER: 08B-UI-04691

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Shawn A. Cook, worked for Des Staffing Services, Inc. beginning November 6, 2007, (Tr. 2, 4, 7) The employer, a temporary staffing company, assigned him to Farmers Fresh Poultry as a full-time laborer who later became a lead man or assistant supervisor. (Tr. 2, 5) The claimant signed a contract, which indicated his pay would be \$10.00/hour. Mr. Cook worked approximately 48-50 hours a week. (Tr. 2, 5)

Less than a month later, however, his pay was reduced to \$8.00/hour due to some contract miscommunication between the employer and his assignment employer. (Tr. 3, 5) In addition, his hours were reduced to twenty a week. (Tr. 2-3, 5) Mr. Cook told Farmers Fresh he on December 27, 2007 because he had to relocate due to his inability to pay his bills. (Tr. 3, 5, 7) He contacted DES a few

days later to inform him of his quit. (Tr. 3, 6) The claimant was unaware of any policy requiring him to contact DES within three days of his concluding an assignment. (Tr. 6)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2007) provides:

An individual shall be disqualified for benefits: *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 24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employer 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...

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

Here, the claimant signed a contract of hire to work for a specified amount per hour that was shortly thereafter reduced. The only explanation he received was that there was a miscommunication between the temporary staffing employer and the assignee employer. Although the claimant continued to work for a short time, his decision to quit was prompted by yet another change, i.e., a reduction in his hours, which had a more substantially negative effect on his finances.

871 IAC 24.26(1) provides:

The following are reasons for a claimant leaving employment with good cause attributable to the employer:

A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifying 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 of 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. The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431

(Iowa 1988); O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). 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 touchstone in deciding whether a delay in resigning will disqualify the Claimant from benefits is whether his "conduct indicates he accepted the changed in his contract of hire." Olson at 868.

For this reason, alone, the claimant would be entitled to benefits as Iowa law provides a quit based on a change in one's contract of hire is a quit with good cause attributable to the employer.

The employer's argument that he should be disqualified because he failed to inform the employer within three days of his ending his assignment is without merit. The employer failed to provide any corroborating evidence that DES had a separate, clear and concise call-in policy as required by Iowa Code section 96.5(1)"j," which provides as follows:

- j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequence of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

Mr. Cook testified that he had no knowledge of such a policy, as he didn't recall signing such a document, much less receiving the same. (Tr. 6) Although he couldn't specifically recall when he contacted the employer, he was reasonably certain it was within a few days of his quit. Because the employer had access to such a document and any allegedly signed document, yet failed to produce it at the hearing, we attribute more weight to the claimant's testimony. We conclude that the employer failed to comply with the notice requirements set forth in "j". For this reason, we also conclude that the claimant's quit was not a disqualifying event.

DECISION:

The administrative law judge's decision dated June 2, 2008 is **REVERSED**. The claimant voluntarily quit with good cause attributable to the employer. Accordingly, he is allowed benefits provided he is otherwise eligible.

John A. Peno

Elizabeth L. Seiser

AMG/fnv

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

AMG/fnv