

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARRY G PAPESH**  
Claimant

**APPEAL NO. 11A-UI-12261-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THYS CHEVROLET INC**  
Employer

**OC: 08/14/11**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 9, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 11, 2011. Claimant Barry Papesh participated. Chad Duncan, General Manager, represented the employer. Exhibits One through 14 and A through J were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Barry Papesh was employed by Thys Chevrolet, Inc., as a full-time car salesperson from July 2010 until August 10, 2011, when he voluntarily quit because he was not being fully and fairly compensated for all of his car sales. Mr. Papesh's immediate supervisor was Chad Duncan, General Manager. Mr. Papesh's compensation was entirely commission based. Mr. Papesh was allowed a small monthly draw against expected commissions. Mr. Papesh quit after Mr. Duncan and the business owner manipulated multiple sales transactions to reduce or eliminate the commission due to Mr. Papesh. In addition, the employer systematically withheld information from Mr. Papesh that he would need to determine whether he was being fairly compensated in connection with his sales.

**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).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit 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). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence in the record indicates that the employer significantly altered the conditions of the employment and created intolerable working conditions by employing various tactics to reduce or completely eliminate commissions that a reasonable person in Mr. Papesh's position would expect to be paid. In short, the employer was cheating Mr. Papesh out of commissions, creating new rules at whim, and withholding necessary information from Mr. Papesh. Only when Mr. Papesh determined that the conduct would not change did he end the employment.

Mr. Papesh quit the employment for good cause attributable to the employer. Accordingly, Mr. Papesh is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Papesh.

**DECISION:**

The Agency representative's September 9, 2011, reference 01, decision is affirmed. The claimant voluntarily 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs