

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARTIN L STANEK**  
Claimant

**APPEAL NO. 13A-UI-09654-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DORHN TRANSFER**  
Employer

**OC: 07/14/13**  
**Claimant: Appellant (2-R)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Martin Stanek filed a timely appeal from the August 14, 2013, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on September 25, 2013. Mr. Stanek participated personally and was represented by attorney Christine Keys. Sally Jackson represented the employer and presented additional testimony through Shawn Carney and Megan Hickey. Exhibits One, Two, A and B were received into evidence.

**ISSUE:**

Whether Mr. Stanek separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Martin Stanek started his full-time employment with Dorhn Transfer in August 2012 and worked as a full-time route driver until May 8, 2013. Mr. Stanek's duties involved transporting tires from Walcott, Iowa to a John Deere plant in East Moline, Illinois. The work hours for the driving were 6:30 a.m. to 5:30 p.m., Monday through Friday. The pay for the driving work was \$14.00 per hour.

On May 8, 2013, Mr. Stanek was at the John Deere facility when a contractor was killed when a trailer fell on top of the contractor. Thereafter, Mr. Stanek's family doctor took Mr. Stanek off work. Mr. Stanek continued on the leave of absence until July 10, 2013. During the leave, Mr. Stanek provided the employer with medical excuses to continue the leave. These included a note from a medical professional that indicated Mr. Stanek was suffering from post-traumatic stress disorder. When Mr. Stanek's health care provider released him to return to work on July 10, 2013, it was with the restriction that he not work around trailers, that another driver handle deliveries, that he only work an eight-hour day, and that he have weekends off.

On May 21, 2013, Mr. Stanek notified the employer that he wished to file a worker's compensation claim. Megan Hickey, Dorhn Transfer Risk and Recruitment Supervisor, forwarded the claim to the employer's worker's compensation carrier. The claim was denied by the carrier.

Prior to return to work on July 10, 2013, Mr. Stanek had obtained legal counsel to assist him with the worker's compensation claim.

On July 10, 2013, Sally Jackson, Dorhn Transfer Human Resources Director, met with Mr. Stanek to discuss the alternate work the employer proposed to make available in light of the medical release Mr. Stanek had provided. The employer proposed to have Mr. Stanek complete mileage logs. The employer designated 1:00 p.m. to 9:30 p.m. on July 10, 2013 and the time during which Mr. Stanek would be trained in the work. The employer designated the work hours for the actual mileage log work as 9:00 p.m. to 5:30 a.m. In other words, the employer assigned Mr. Stanek to perform clerical work, but to do it during the overnight hours. The overnight work hours were to start on the evening of July 11, 2013. The employer assigned Shawn Carney, Line Haul Supervisor, to supervise the overnight work.

Mr. Stanek participated in training on July 10, 2013, but left before 9:30 p.m. Before Mr. Stanek left that evening, he told Mr. Carney that the proposed work hours were bullshit and that the employer was messing with him because of his mental state. Mr. Stanek asked Mr. Carney why he had been assigned overnight hours and Mr. Carney told Mr. Stanek he did not know. Mr. Stanek told Mr. Carney that he had to take care of kids and the hours were not going to work. Mr. Stanek told Mr. Carney that he did not feel well and that he was going home. Mr. Stanek asked Mr. Carney to have Gary Dohrn contact him at home. Mr. Carney agreed to forward Mr. Stanek's concerns to Sally Jackson, Human Resources Manager, and to Russ Scheffler, Vice President.

Mr. Stanek returned to the workplace at 9:00 p.m. on July 11, 2013. At that time, Mr. Stanek asked Mr. Carney what work he was supposed to do that evening. Mr. Stanek said the log books. Mr. Stanek asked if he was to do the log books all night and Mr. Carney said yes. Mr. Stanek then went to the office, presumably to begin his work. Twenty minutes later, Mr. Stanek brought the log books and a calculator from the office and moved his work space to a back corner of the dispatcher's area. Mr. Stanek asked Mr. Carney for changes for the vending machine. That was the last time Mr. Carney saw Mr. Stanek. When Mr. Carney checked on Mr. Stanek at 10:30 p.m., Mr. Stanek was gone. Mr. Stanek had left the workplace without locking out. Mr. Stanek later asserted, through his attorney, that Mr. Carney had directed him to leave at 9:45 p.m. and that Mr. Carney had said he had been instructed to call the police if Mr. Stanek made a scene. No such conversation had taken place between Mr. Stanek and Mr. Carney.

Mr. Stanek did not return to the employment after his early departure on July 11, 2013.

#### **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.

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).

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).

The weight of the evidence establishes that Mr. Stanek voluntarily quit the employment on July 11, 2013. The weight of the evidence does not support Mr. Stanek's assertion that the employer ordered him off the property on July 11 or that the employer discharged him from the employment. Ms. Jackson's cross-examination of Mr. Stanek revealed problems with Mr. Stanek's credibility. During the cross-examination, Mr. Stanek made a number of concessions that suggested the employer's testimony is more reliable than Mr. Stanek's testimony.

The evidence establishes a quit in response to the particular work hours and duties that the employer assigned to Mr. Stanek after Mr. Stanek presented the employer with work restrictions relating back to the May 8, 2013 tragedy at the John Deere plant. The weight of the evidence indicates that the employer intentionally gave Mr. Stanek work hours that would prompt him to leave the employment. The employer has offered no reasonable basis for assigning Mr. Stanek to perform clerical work from 9:00 p.m. to 5:30 a.m. Rather than providing reasonable

accommodations, the employer engaged in conduct specifically designed to bring the employment to a quick end without the employer discharging Mr. Stanek from the employment. The employer actions and Mr. Stanek's actions took place in the context of a pending worker's compensation claim and that fact appears to have been an important factor in how the employer handled Mr. Stanek's return to work. The employer has offered no evidence to indicate that Mr. Stanek's mental health issues relating to the May 8 tragedy were not genuine. The weight of the evidence indicates that the employer imposed a substantial change in the conditions of the employment when the employer required Mr. Stanek to work a shift dramatically different than the shift he had previously worked. Mr. Stanek's medical or mental issues in no way necessitated overnight work hours. The employer's conduct created an intolerable and detrimental working condition.

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

**DECISION:**

The agency representatives August 14, 2013, reference 03, decision is reversed. 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.

This matter is remanded to the Claims Division for determination of whether the claimant has been able to work and available for work since he established his claim for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs