

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEVIN H HERZBERGER
Claimant

APPEAL NO. 07A-UI-10573-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIANCE DIVERSIFIED SERVICES LLC
Employer

OC: 10/07/07 R: 03
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Devin Herzberger filed a timely appeal from the November 8, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 6, 2007. Mr. Herzberger participated. Connie Pegump, Human Resources Manager, represented the employer and presented additional testimony through John Clapp, Warehouse Supervisor. Exhibits One through Four and A through D were received 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: Devin Herzberger was employed by Alliance Diversified Services as a full-time Fabricator from August 10, 2007 until October 9, 2007, when he voluntarily quit. Mr. Herzberger's immediate supervisor was Warehouse Supervisor John Clapp. Mr. Herzberger last appeared and performed services for the employer on October 3, 2007. On that date, Ms. Herzberger left work early with approval after he received word that his son was suicidal. Mr. Herzberger was absent on October 4 and 5 due to his son's medical treatment needs. Mr. Herzberger properly notified the employer of both absences. On October 8 and 9, Mr. Herzberger was absent due to the need to participate in meetings at his son's school, which meetings were directly related to his son's recent suicidal ideation. Mr. Herzberger properly reported these absences to the employer.

On October 9, in response to Mr. Herzberger's message that he would again be absent, Mr. Clapp left a voice message for Mr. Herzberger. Mr. Clapp asked Mr. Herzberger whether it was really necessary for Mr. Herzberger to miss the entire day. Mr. Clapp told Mr. Herzberger that he was in danger of losing his full-time employee status, as well as his health and dental benefits, by falling below the employer's 35-hour per week eligibility threshold. Mr. Herzberger had missed prior shifts, primarily due to his own illness or the illness of a child. These absences had been properly reported to the employer. Mr. Herzberger's average weekly hours had not yet fallen below the 35-hour threshold. The employer had not yet made any decision or taken

any steps to alter Mr. Herzberger's full-time status or benefit eligibility. Rather, Mr. Clapp had confirmed with the Human Resources Department that Mr. Herzberger was still above the 35-hour threshold. Mr. Clapp requested a call from Mr. Herzberger and directed Mr. Herzberger to contact Human Resources Manager Connie Pegump to discuss the situation concerning his continued eligibility for full-time status and benefits.

Mr. Herzberger misinterpreted Mr. Clapp's message to mean that he had already lost his medical and dental benefits and that he had already lost his full-time status. Mr. Herzberger left a message that indicated he was going to do whatever was needed to care for his son. Mr. Herzberger was clearly upset at the time he left his message for Mr. Clapp. Mr. Herzberger did not return to the employer or make further contact with the employer.

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).

The greater weight of the evidence in the record indicates that the employer had in fact taken no steps to alter the conditions of Mr. Herzberger's employment as of October 9, 2007. The

greater weight of the evidence indicates that the employer merely placed Mr. Herzberger on notice that he was at risk of losing his full-time status and benefits. The evidence indicates that the employer specifically requested that Mr. Herzberger contact the employer to further discuss this concern. The evidence indicates that Mr. Herzberger was upset, misconstrued the employer's message, and voluntarily quit the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Herzberger voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Herzberger is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Herzberger.

DECISION:

The Agency representatives November 8, 2007, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs