

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JUSTIN J TALBERT**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 22A-UI-07897-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/27/21**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Justin J Talbert, the claimant/appellant filed an appeal from the March 11, 2022 (reference 07) unemployment insurance decision that denied benefits because of a September 9, 2021 voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on May 12, 2022. Mr. Talbert participated personally. The employer participated through Brandy Kading, human resources manager, and Asia Anderson, Corporate Cost Control hearing representative. The administrative law judge took official notice of the administrative record. Employer's Exhibit 1 was admitted as evidence.

**ISSUE:**

Did Mr. Talbert voluntarily quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Talbert began working for the employer on September 9, 2021. His employment ended on September 9, 2021.

On August 26, 2021, the employer held a job fair for day-shift production workers (6:00 a.m. – 2:00 p.m.) and sanitation workers for the overnight shift. Mr. Talbert completed an application that day, participated in an interview, and took a drug test. Mr. Talbert was interested in the day-shift job. Mr. Talbert met the employer's criteria and the employer told him he was hired for the day-shift. The employer told Mr. Talbert to return on September 9 for orientation.

Despite what the employer had told Mr. Talbert on August 16, the employer had not yet made a final decision on which shift it wanted Mr. Talbert work. The employer planned to make a final decision on September 10, the second day of orientation. The employer did not tell Mr. Talbert this information.

Mr. Talbert attended orientation on September 9. That day, the employer offered Mr. Talbert the overnight sanitation job. Mr. Talbert told the employer that he was interested in the

overnight job but he would have to talk with the mother of his children first to see if working overnight would work for their childcare arrangements. Later that day, Mr. Talbert told the employer that he could not accept the overnight job.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Mr. Talbert's separation from employment was with good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.26(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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871—24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871—24.26(4), the intolerable working conditions provision. The Iowa Supreme Court recently concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871—24.26(6)(b) but not 871—24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

In this case, Mr. Talbert suffered substantially different working hours than he was led to believe at the time of hire. The day of the job fair the employer told Mr. Talbert that he would be working from 6:00 a.m. – 2:00 p.m. Two weeks later at orientation, the employer offered Mr. Talbert work on the overnight shift. Mr. Talbert suffered a substantial change in the contract of hire, and his quit was with good cause attributable to the employer. Benefits are allowed.

**DECISION:**

The March 11, 2022, (reference 07) unemployment insurance decision is REVERSED. Mr. Talbert's quit was for good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.



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June 27, 2022  
Decision Dated and Mailed

dz/mh