

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN M HAWKINS**

Claimant

**APPEAL NO. 17A-UI-11802-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FRESH THYME FARMERS MARKET**

Employer

**OC: 10/29/17**

**Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

John Hawkins filed a timely appeal from the November 14, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the Benefit Bureau deputy's conclusion that Mr. Hawkins voluntarily quit on September 13, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 7, 2017. Mr. Hawkins participated. Sandra Linsin of Employer's Unity represented the employer and presented testimony through Rex Maresch and Sara Ludlow. Exhibits 1 through 5 and A were received into evidence.

**ISSUE:**

Whether Mr. Hawkins' 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: John Hawkins was employed by Fresh Thyme Farmers Market on a full-time basis from December 2016 until September 17, 2017, when he voluntarily quit. Mr. Hawkins began the employment as an Assistant Grocery Manager. Mr. Hawkins completed training at another store and then commenced working at the employer's Millard store in January 2017. The Millard store opened for business in February 2017. In March 2017, Mr. Hawkins was promoted to Third Key Assistant Manager. On August 6, 2017, Mr. Hawkins was demoted back to Assistant Grocery Manager.

The grocery store Mr. Hawkins worked at had a higher than average turnover in the management staff. When Mr. Hawkins was promoted to Third Key Assistant Manager, George Grant was Store Manager, and was the person who promoted Mr. Hawkins and made the promotion retroactive to January 2017. Mr. Grant left the company in May 2017. At that time, the store operated without a store manager for a couple months. During that interval, Assistant Store Manager Pat Smith functioned as acting Store Manager. Mr. Smith has since left the store where Mr. Hawkins worked and moved to a different store within the company. In early August 2017, Sean Curtis became the Store Manager. Subsequent to Mr. Hawkins separation from the company, Mr. Curtis also left the employer.

On July 24, 2017, Mr. Hawkins reported a workplace injury to Mr. Smith, acting Store Manager, that he had strained his back performing his work duties. The employer had Mr. Hawkins evaluated by a physician of the employer's choosing and that physician took Mr. Hawkins off work for two weeks. Mr. Hawkins returned to the employment on or about August 6, 2017. During Mr. Hawkins' absence, Mr. Curtis became the store manager. In addition, Corky Anderson, Western Regional Manager, moved Rex Maresch to the Millard store as the new Third Key Assistant Manager. When Mr. Hawkins returned to work following his back strain issues, he was released to work without restrictions. When Mr. Hawkins returned to work he did so under the belief that he was the Third Key Assistant Manager. Mr. Hawkins and Mr. Maresch had to respond to the confusion the employer created regarding Mr. Hawkins' position with the employer and status in the management hierarchy. Mr. Hawkins and Mr. Maresch went to Mr. Curtis for clarification and at that time, Mr. Curtis told Mr. Hawkins of his demotion to Assistant Grocery Manager. While the employer asserts the demotion was based on performance issues, the timing of the demotion and subsequent events indicate a connection to Mr. Hawkins being off work in connection with the workplace injury. In connection with the demotion, Mr. Hawkins's wage reduced from \$19.50 per hour to \$17.00 per hour. The number of employees supervised and the areas of responsibility also decreased.

Despite the demotion that was effective August 6, 2017, Mr. Hawkins remained in the employment until mid-September 2017. During that period, Mr. Hawkins felt that he was being harassed by Mr. Curtis and the Assistant Store Director. This perception of harassment arose from multiple and various incidents. Over time, the employer began to schedule Mr. Hawkins for few morning shifts and more afternoon shifts. As a member of management, Mr. Hawkins had been obligated from the start of the employment to maintain availability for work during all hours of operation. Mr. Hawkins preferred to work earlier in the day when freight was being delivered to the store. Mr. Hawkins lacked a vehicle and coordinated transportation with a roommate. The increase in later work hours made it more difficult for Mr. Hawkins to arrange transportation to work. Mr. Hawkins was responsible for moving the freight from the back room to the retail shelves, but overtime had to perform the same duties with less assistance. The Assistant Store Director reassigned bagging staff to other work during the evening hours and left to Mr. Hawkins responsibility for retrieving from the lot more shopping carts than usual at the end of the business day. Mr. Hawkins perceived the increased physical demands of his job to be a set-up for retriggering his back strain. On one occasion, the Assistant Store Director deleted a freight order that Mr. Hawkins had taken an hour to prepare and then erroneously asserted that Mr. Hawkins did not have authority to place the freight order. Mr. Curtis clarified that Mr. Hawkins did have authority to place the freight order. Mr. Hawkins then had to spend another hour recreating the freight order. On another occasion, Mr. Curtis and the Assistant Store Director duplicated an order that Mr. Hawkins and Mr. Maresch had created. The duplicated order resulted in the store having double the necessary freight. Mr. Hawkins was the person responsible for ensuring that the freight order did not exceed the store's needs and the person who would be held responsible if the freight on hand exceeded the store's needs. On one occasion, Mr. Hawkins overheard Mr. Curtis expressing to another manager a desire to discharge Mr. Hawkins from the employment.

The employer had a dispute resolution policy. Mr. Hawkins did not utilize the dispute resolution policy, but routinely brought his concerns to the attention of his superiors.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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).

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.

"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 in the record establishes a voluntary quit in response to ongoing changes in the contract of hire in response to ongoing intolerable and detrimental working conditions. The timing of the demotion corresponded to Mr. Hawkins return to work following a workplace injury and associated absence. The decision to replace Mr. Hawkins as Third Key Assistant Manager was made while Mr. Hawkins was off work for the work-related injury. While

the store appears to have operated with a fairly steady level of chaos and miscommunication, the nature, number and pattern of events following Mr. Hawkins' return to the employment together point to an attempt to get him to the point where he would feel compelled to leave the employment. The changes to the conditions of employment were substantial in nature. Under the circumstances, Mr. Hawkins did not unduly delay in leave the employment following the changes.

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

**DECISION:**

The November 14, 2017, reference 01, decision is reversed. The claimant quit the employment on September 17, 2017 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.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/rvs