

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DECAMP, LARRY, K
Claimant

APPEAL NO. 13A-UI-00031-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 11/18/12
Claimant: Respondent (4)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 24, 2012, reference 01, decision that allowed benefits to claimant Larry DeCamp provided he was otherwise eligible. After due notice was issued, a hearing was held on February 5, 2013. Mr. DeCamp participated. Paul Hammell, Store Council, represented the employer and presented testimony through Shaphan Smith, General Manager, and Travis Spiker, First Assistant General Manager. Exhibits One through Five were received into evidence.

ISSUES:

Whether Mr. DeCamp separated from the employment for a reason that would disqualify him for unemployment insurance benefits.

Whether the employer's account may be charged for benefits paid to Mr. DeCamp.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Larry DeCamp was employed by Menard, Inc., as a part-time electrical department sales team member from March 2012 until November 21, 2012. Mr. DeCamp was hired to assist with preparing employer's new store to open in Marshalltown and stayed on as a sales associate after the store opened in mid-2012. After the store opened, Mr. DeCamp worked 10 to 20 hours per week. Mr. DeCamp had a series of supervisors. During the last month and a half of the employment, Mr. DeCamp's immediate supervisor was Sharon Leavy, Electrical Department Manager. During the last few weeks of Mr. DeCamp's employment, Dustin Wright was the Assistant Electrical Department Manager. Mr. DeCamp generally worked evenings and weekends. Mr. DeCamp was a semi-retired person while he worked for the employer.

In August 2012, Mr. DeCamp submitted an availability statement to the store management. Mr. DeCamp indicated that during the summer and fall golf season, he wanted to play golf with his golf group on Saturdays, Sundays, and Wednesdays. Mr. DeCamp indicated that this would limit his availability for those days to working 4:00 p.m. to close on Saturdays and Sundays and 5:00 p.m. to close on Wednesdays. In the same availability statement, Mr. DeCamp indicated

that during the Marshalltown High School football season he was not available to work after 5:00 p.m. on Fridays because he was a football program booster and needed to assist the program. The employer accommodated Mr. DeCamp's work availability restrictions.

On November 12, 2012, Mr. DeCamp submitted a written resignation memo to the employer. The memo was addressed to Shaphan Smith. Mr. Smith was the General Manager at the Marshalltown store from September 2012 onward. In the resignation memo, Mr. DeCamp indicated that his last day would be Saturday, November 24, 2012. Mr. DeCamp did not reference a reason for the quit in his resignation memo. The employer filed Mr. DeCamp's resignation memo in his personnel file. Mr. DeCamp had submitted his resignation because the employer had gone forward with hiring a full-time sales associate for the electrical department, rather than increasing Mr. DeCamp's part-time hours. Mr. DeCamp had continued to be scheduled for 10 to 20 hours per week in accordance with his previous availability schedule. In mid-October, Mr. DeCamp had mentioned to Travis Spiker, First Assistant General Manager, that he wanted more work hours. On the day Mr. DeCamp tendered his resignation, he was scheduled to work from 10:00 a.m. to 4:00 p.m., but was sent home early by Mr. Wright due to decreased staffing needs during that shift.

The second reason for Mr. DeCamp's resignation was that he did not care for Ms. Leavy's personality. Early in Ms. Leavy's tenure as department manager, Mr. DeCamp had mentioned general concerns to Mr. Smith about Ms. Leavy's personality and attitude. Mr. DeCamp had not elaborated at that time and had not brought any further concerns about such matters to Mr. Smith's attention after the initial mention. Mr. DeCamp thought that Ms. Leavy did not treat him with the respect he was due. Mr. DeCamp believed Ms. Leavy lacked communication skills.

After Mr. DeCamp submitted his resignation memo on November 12, he was absent from a department meeting on November 13. Mr. DeCamp had advance notice of the 9:00 p.m. meeting, but fell asleep at home and slept through it. The meeting time was well within Mr. DeCamp's regular work hours. Depending on the day of the week, the store would close at 9:00 p.m. or 10:00 p.m. and Mr. DeCamp would generally leave the workplace by 30 minutes after closing. On November 15, Mr. DeCamp was seven minutes late for work. On November 16 Mr. DeCamp worked a 6:00 p.m. to close shift. On November 17, Mr. DeCamp was absent from his 4:00 p.m. to 9:00 p.m. shift. Mr. DeCamp was having bladder control issues. Mr. DeCamp contacted Mr. Wright at 3:30 p.m. and told him he would need to be gone from the shift because he was starting a colon cleansing regimen in preparation for a colonoscopy scheduled for November 19. However, Mr. DeCamp was not scheduled to start the colon cleansing regimen until November 18.

After November 17, Mr. DeCamp was next scheduled to work on November 21 at 10:00 a.m. The reason Mr. DeCamp was not scheduled to work between those two days was his need to take time off to prepare for and to undergo the colonoscopy set for November 19. When Mr. DeCamp arrived for work on November 21, Ms. Leavy directed him to the office, where Mr. DeCamp met with the employer's Human Resources Coordinator, Therese Reinhold, and Mr. Spiker. Ms. Reinhold notified Mr. DeCamp that he had reached ten attendance points and was being discharged from the employment.

On November 15, Mr. DeCamp had spoken to the second assistant manager to request that his resignation be rescinded. The employer did not agree to rescission of the resignation.

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.

871 IAC 24.25 (22) and (37) provide:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

22) The claimant left because of a personality conflict with the supervisor.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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).

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.

The weight of the evidence in the record establishes that Mr. DeCamp *voluntarily quit* the employment, effective November 24, 2012, by means of the written resignation he submitted to the employer on November 12, 2012. The weight of the evidence indicates that the employer had accepted the resignation and had placed the resignation memo in Mr. DeCamp's personnel file. The employer was under no obligation to allow Mr. DeCamp to rescind the resignation and did not allow Mr. DeCamp to rescind the resignation.

The weight of the evidence fails to establish a substantial change in conditions of the employment that would make Mr. DeCamp's voluntary quit for good cause attributable to the employer. Mr. DeCamp provided contradictory testimony regarding his work availability and work hours. Mr. DeCamp asserted he had made no changes to and placed no restrictions on his availability. Then the administrative law judge questioned him about the letter he had submitted to the employer in August 2012 to restrict his availability. Only then did Mr. DeCamp provide testimony regarding the restrictions he had indeed placed on his availability. Mr. DeCamp testified that by October he was only averaging five hours per week. Mr. DeCamp's later testimony indicated that during the very week he submitted his resignation, he was scheduled for six hours on Monday, November 12, was scheduled to work an unspecified number of hours on November 15, worked five hours on November 16 and was scheduled to work five hours on Saturday, November 17. The total hours scheduled for that week exceeded 20. The weight of the evidence fails to establish a substantial reduction in the number of hours the employer had for Mr. DeCamp.

Mr. DeCamp's personality conflict with Ms. Leavy would not provide good cause attributable to the employer for leaving the employment. Mr. DeCamp testified that there was nothing in particular that Ms. Leavy had gone to merit his dissatisfaction with her. Instead, Mr. DeCamp simply felt she did not treat him with the respect he deserved and lacked communication skills.

The weight of the evidence establishes a voluntary quit, effective November 24, 2012, that was without good cause attributable to the employer. Effective Sunday, November 25, 2012, Mr. DeCamp 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. DeCamp for the period beginning November 25, 2012.

When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation in the future quit date given by the claimant. See Iowa Administrative Code rule 871-24.26(12).

Because the employer elected to end the employment on November 21, 2012, rather than allow Mr. DeCamp to work through his Saturday, November 24, 2012, effective quit date, Mr. DeCamp is eligible for benefits for the week that ended November 24, 2012, provided he meets all other eligibility requirements. The employer's account may be charged for benefits for that week. However, the employer's liability for benefits is limited to that one week.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Mr. DeCamp lacks sufficient other base period wage credits to be eligible for reduced benefits. Thus, effective November 25, 2012, Mr. DeCamp is disqualified for benefits as stated above.

DECISION:

The Agency representatives December 24, 2012, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer effective November 24, 2012. Effective November 25, 2012, 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 paid to the claimant for the period beginning November 25, 2012. Because the employer ended the employment prior to the end of the notice period provided by the claimant, the claimant is eligible for benefits for the week that ended November 24, 2012, provided he is otherwise eligible. The employer's account may be charged for benefits, if any, paid to the claimant for the week that ended November 24, 2012, but the employer liability for benefits is limited to that week.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css