

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT D THRIFT
Claimant

APPEAL NO. 09A-UI-07143-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BE & K CONSTRUCTION COMPANY
Employer

OC: 04/12/09
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Robert Thrift filed a timely appeal from the May 5, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 3, 2009. Mr. Thrift participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence.

ISSUE:

Whether Mr. Thrift'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: Robert Thrift was employed by BE & K Construction Company on a full-time basis from June 2008 until April 9, 2009, when he voluntarily quit. Mr. Thrift was promoted to general foreman in February 2009. On December 8, 2008, the employer notified Mr. Thrift and other employees working at an ADM construction site in Cedar Rapids that ADM would no longer provide "per diem" compensation to the BE & K employees working at its site. Up to that time, Mr. Thrift had received \$70.00 as reimbursement for his living expenses. Mr. Thrift is from Mississippi and was supporting a family back in Mississippi. In the same notice, the employer indicated that employees would continue to work 50 hours per week. In the notice, the employer advised employees that if they could not afford to stay at the job site due to elimination of the per diem reimbursement, their departure from that job site would not prevent them from working on other BE & K sites.

On December 23, Mr. Thrift returned to Mississippi for the Christmas holiday. Mr. Thrift returned to the job site on January 2, 2009. The employer reduced the amount of available overtime. Within two to three weeks of his return to Cedar Rapids, the employer eliminated all overtime. Mr. Thrift had money saved and continued in the employment under the changed conditions until he exhausted the money he had saved. Mr. Thrift left the job on April 9, 2009 because he could no longer afford his living expenses in Iowa. Mr. Thrift returned to Mississippi.

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 weight of the evidence establishes significant changes in the conditions of the employment. One significant change was the elimination of the \$70.00 per diem reimbursement effective December 8, 2009. Another significant change was the reduction of overtime hours at the beginning of January. Yet another significant change in the conditions of the employment was the complete elimination of overtime hours during the latter part of January. The weight of the evidence indicates that Mr. Thrift acquiesced in the changing conditions of the employment by continuing in the employment more than two months after the most negative change occurred. Perhaps this was because Mr. Thrift was promoted and received a raise in February 2009. In any event, Mr. Thrift's decision to remain in the employment as long as he did caused the quit in April to not be for good cause attributable to the employer. Mr. Thrift 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. Thrift.

DECISION:

The Agency representatives May 5, 2009, 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/css