

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY L SMITH
Claimant

APPEAL NO. 07A-UI-01795-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AYM INC
Employer

OC: 01/21/07 R: 03
Claimant: Respondent (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, AYM, Inc., filed an appeal from a decision dated February 8, 2007, reference 01. The decision allowed benefits to the claimant, Larry Smith. After due notice was issued a hearing was held by telephone conference call on March 6, 2007. The claimant participated on his own behalf. The employer participated by Human Resources Representative Marlene Dobraska.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Larry Smith was employed by AYM, Inc., from February 13, 1989 until January 19, 2007, as a full-time maintenance person. At the time of separation he worked 7:00 a.m. to 3:30 p.m. and earned \$15.85 per hour.

The machinery in the facility was gradually being replaced with new equipment which the claimant did not have the skill to maintain as he had the older machines. Although additional training was available to him to update his skills, he did not request any because he felt he could continue to maintain the older machines without difficulty. Mr. Smith did not pass his March 2006 performance review, losing points in the areas of initiative, adaptability, utilization of time and progress. He did pass his 60-day review in May 2006. However, due to internal changes by the employer, more would soon be required of the job as maintenance person and it was felt the claimant would not be able to keep up.

On January 16, 2007, Plant Manager Jim Powers and Human Resources Representative met with the claimant to discuss his job future. He was offered other positions on the first shift, either as a production worker at \$14.63 per hour, or a janitorial worker at \$12.50. On January 19, 2007, he notified the employer he did not want to take either position because he had never done production and did not want to do janitorial work.

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 24.26(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's job as a maintenance person was no longer available to him. The other two jobs offered to him were still on the first shift but at a reduction in pay of 8 percent or 22 percent. In addition, the job duties would have been completely different, jobs he had not done in the 18 years he had worked for the company. This is a substantial change in the contract of hire. Under the provisions of the above Administrative Code section, this is good cause attributable to the employer for quitting and the claimant is qualified.

DECISION:

The representative's decision of February 8, 2007, reference 01, is affirmed. Larry Smith is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs