

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BYRON L SMITH
Claimant

APPEAL NO. 10A-UI-12034-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADANCE SERVICES
Employer

OC: 07/04/10
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from an August 17, 2010, reference 02, decision that denied benefits finding the claimant voluntarily quit employment without good cause attributable to the employer. After due notice, a telephone hearing held on October 12, 2010. The claimant participated personally. The employer participated by Ms. Holly Carter, Unemployment Insurance Specialist.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Byron Smith was most recently employed by Adance Services beginning February 1, 2010. Mr. Smith was assigned to work as a machinist at the Eaton Corporation, a client of Adance Services. The claimant was paid \$12.00 per hour. His contact person at Adance Services was "Steve" last name unknown.

While performing his duties for Adance Services at the Eaton Corporation as a machinist, Mr. Smith contracted "contact dermatitis" due to substances in the workplace. Mr. Smith was sent for medical treatment by Adance Services and the examining physician instructed that Mr. Smith not return to the assignment at Eaton until he had recovered from the dermatitis. Because the claimant could not continue at his assignment at Eaton because of the doctor's orders, he was re-assigned temporarily by Adance Services to work at an alternative client employer, the Jack Links Company. Mr. Smith was informed the he would continue to be paid at the rate of \$12.00 per hour and that when his contact dermatitis was cleared up he would be assigned back to work at the Eaton Corporation performing his regular duties and receiving his regular \$12.00 per hour pay.

On June 25, 2010, Mr. Smith was informed by his contact person "Steve" that he would not be transferred back to the Eaton Corporation as promised. The claimant was required to turn in his equipment for the Eaton job position and informed that he would continue to be assigned at the

Jack Links Company but his pay was reduced to \$8.00 per hour. Mr. Smith considered this to be a substantial change in the working agreement and left his employment at that time. The claimant was to have resumed his assignment at Eaton Corporation on Monday, June 28, 2010 until he was told on Friday, June 25, 2010 that he would not be returning to Easton and that his pay was being reduced.

REASONING AND CONCLUSIONS OF LAW:

The issue before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does.

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 evidence in the record establishes that the claimant left employment due to a substantial change in the work agreement between the parties. Mr. Smith had accepted an assignment with Adance Services to work at the Eaton Corporation performing work as a machinist at the rate of \$12.00 per hour. When the claimant was injured at work he was promised by his immediate supervisor that he could continue to work at an alternative work assignment at the same rate of pay until he recovered and that then he would be returned to Eaton Corporation performing his regular job at the same pay. Mr. Smith dutifully complied with his portion of the agreement by traveling to the alternative location and continuing to work until June 25, 2010 when he was informed that he would not be returned to Eaton as promised but would be required to continue working at the alternative assignment receiving \$8.00 per hour instead of the agreed \$12.00 per hour. Mr. Smith reasonably concluded this was a substantial alteration of the work agreement between the parties and left employment at that time.

In this case the claimant participated personally and provided sworn testimony. In contrast, the employer relied upon hearsay testimony in support of its position. While hearsay evidence is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony. The administrative law judge finds the claimant to be a credible witness and finds that his testimony is not inherently improbable. The claimant's leaving employment was attributable to the employer and he is eligible to receive unemployment insurance benefits providing that he meets all other eligibility requirements.

DECISION:

The representative's decision dated August 17, 2010, reference 02, is reversed. The claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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