

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS P REITER
Claimant

APPEAL NO. 13A-UI-03114-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

OC: 01/27/13
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 11, 2013, reference 05, decision that allowed benefits based on an agency conclusion that the claimant had voluntarily quit for good cause attributable to the employer due to a change in the contract of hire. The decision also held that the employer's account could be charged for benefits. After due notice was issued, a hearing was held on April 12, 2013. Claimant Nicholas Reiter did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Kay Byers, Assistant Store Manager, represented the employer. The administrative law judge took official notice of the March 4, 2013, reference 04 decision and the fact-finding materials upon which that decision was based. Exhibits One and Two were received into evidence.

ISSUES:

Whether Mr. Reiter's voluntary quit was for good cause attributable to the employer. It was.

Whether the sole basis of Mr. Reiter's voluntary quit was to accept other employment. No, that was not the sole basis for the quit.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Nicholas Reiter was employed by Dillard's as a sales associate from June 2012 until February 20, 2013, when he voluntarily quit. Mr. Reiter's hourly wage was \$11.00. On January 27, 2013, Mr. Reiter had established a claim for unemployment insurance benefits. Mr. Reiter established the claim for benefits in response to the employer's decision to cut his work hours from full time to part time. The cut in hours was not based on misconduct. The employer reduced the work hours from 35 or more to 30 or less. On February 6, 2013, Mr. Reiter provided notice to Dillard's that he would be leaving the employment effective February 20, 2013. Mr. Reiter had accepted new employment. Mr. Reiter told the employer that he needed more work hours than he was receiving at Dillard's. Mr. Reiter did indeed commence working for the new employer.

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.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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 evidence in the record establishes that Mr. Reiter's acceptance of the new employment was not the sole basis, or even the primary basis, for his voluntary quit from Dillard's. The primary basis for the quit was the employer's decision to reduce his hours from full time to part time and the associated substantial reduction in wages. At minimum, the employer reduced Mr. Reiter's pay by \$55.00 per week. Mr. Reiter voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Reiter is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representative's March 11, 2013, reference 05, decision is affirmed. The claimant voluntarily quit the employment 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/css