BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

DUANE L LOFTIN

Claimant,

and

JELD-WEN INC

Employer.

HEARING NUMBER: 08B-UI-09016

EMPLOYMENT APPEAL BOARD
DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Duane L. Loftin worked for JELD-WEN, Inc. as a full-time special prehung door assembly person beginning October 9, 2006, initially, working the second shift (3:00 p.m.– 11:00 p.m.) until it was closed down on March 4, 2008. (Tr. 7) He was then placed on the third shift, which he accepted (Tr. 7, 9) working Monday though Fridays from 11:00 p.m. until 7:00 a.m. (Tr. 3, 7) He felt content to remain on this shift. (Tr. 11, 12)

In mid-July to the beginning of August of 2008, the employer notified employees that third shift was going to be eliminated due to a slowdown in work. (Tr. 4-5, 7) Mr. Loftin was moved to the first shift performing the same job, same pay, but from 7:00 a.m. until 3:00 p.m. (Tr. 4-5) He was on vacation

the first week of his transfer (Tr. 7, 10) and actually began working on or around August 18th. (Tr. 4, 7)

The claimant reported to work as scheduled until August 26th when he notified the employer that the new shift wasn't for him. (Tr. 3) He called off work, intermittently, and worked other shifts from August 27th through September 2nd. (Tr. 5-6, 8)

On September 3rd, Mr. Loftin contacted the employer to inform him that he was going to resign because didn't like the new hours. (Tr. 3) When Mr. Loftin handed his resignation letter to the employer, Mr. Travis Smith (production manager) offered him the third shift at the same pay rate, which had been reinstated due to an increase in workload. (Tr. 5, 8, 11, 13) The claimant refused his old shift, stating that the shift changes interfered with his lifestyle. (Tr. 9-10) Prior to this shift change, Mr. Loftin never indicated that he wasn't willing to work different shifts as needed. (Tr. 9) Nor did the employer guarantee work on any particular shift.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2007) provides:

> An individual shall be disqualified for benefits: *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 provides:

> *Voluntary quit without good cause*. In general, a voluntary quit means discontinuing the employment because the employer 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…

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

The record establishes that the employer occasionally eliminated and reinstated shifts as needed according to work production. In a manufacturing environment, such shift changing is not all that unusual. The court in Woods v. Iowa Department of Job Service, 315 N.W.2d 838 (Iowa App. 1981) held that it is not a change in the contract of hire to require an employee to change shifts when such changes are called for by the implied contract. In Woods, the claimant quit because of a work assignment dispute in which he believed the employer violated the seniority rule. The claimant was promoted to a position based on his seniority in his former department in which he worked the day shift. However, because he had lowest seniority in the new department, he was moved to the night shift. The person hired to replace him in his former position worked the day shift, which the claimant believed he should have had the day shift given his seniority. The court held that the "… claimant had an affirmative duty to inquire as to why he was being assigned to that shift if he did not agree with it… to make no inquiry but, rather, to tender his resignation rested upon him, not the employer." Woods, *supra*. The court affirmed the agency by denying benefits holding that there was no change in the claimant's

contract of hire.

While there is no evidence that shift changes were or were not a part of any collective bargaining agreement as in Woods, it is clear from this record that the employer routinely made such changes as work production demanded, which was the underlying principle in Woods. Although Mr. Loftin was originally hired for the second shift, he willingly and admittedly accepted the change to third shift, which he worked until another such change was necessary. (Tr. 7, 9, 11, 12) His subsequent refusal to accept this change was duly noted as evidenced by the employer's suggestion that he return to the third shift that had been newly reinstated.

The onus is on the claimant to prove that his quit was without good cause attributable to the employer. Yet, the record shows that once the employer was on notice that the claimant was unwilling to accept the proposed change to first shift, the employer immediately took action to accommodate Mr. Loftin. His return to third shift at the same pay rate cannot be deemed a change in his contract of hire given the fact he worked this shift for almost six months in the recent past. For this reason, we conclude that the claimant failed to satisfy his burden of proof.

DECISION:

The administrative law judge's decision dated November 5, 2008 is **REVERSED**. The claimant voluntarily quit his employment without good cause attributable to the employer. Accordingly, he is denied benefits until such time he has worked in and was paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(1)"g".

Lastly, but not least, Iowa Code section 96.6(2) (2003) provides, in pertinent part:

> ... If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision in finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Although this decision disqualifies the claimant for receiving benefits, those benefits already received shall *not* result in an overpayment.

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Elizabeth L. Seiser

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Monique F. Kuester

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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John A. Peno

AMG/fnv