

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

JON C MILLER

Claimant,

and

ALTORFER INC

Employer.

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HEARING NUMBER: 10B-UI-00643

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

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

DECISION

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, Jon C. Miller, was employed by Altorfer, Inc. from April 13, 1998 through December 11, 2009 as a full-time construction shop mechanic working the first shift. (Tr. 2-3, 7, 15) The claimant oftentimes worked as a field technician, which involved a 50 cent bonus (Tr. 6) and allowed the claimant to work more on his own. (Tr. 6) The claimant had also worked in the shop on several occasions and a number of years with previous employers. (Tr. 17, 23) During the last few years, the company became computerized and started using more advanced technology. (Tr. 5) Mr. Miller had difficulty keeping up with the changes in technology and the employer allowed him 12 months to get up to speed.

In January of 2009, the employer held a performance review that revealed "deficiencies" in the claimant's performance. (Tr. 4) The employer offered the claimant "training and guidance" to improve his skills, which were necessary to perform the duties of a field technician. (Tr. 5) As time progressed,

however,

Mr. Miller did not improve. The employer began receiving customer complaints about his "...workmanship, insufficient computer skills, and technical ability relating to electronic machine systems..." (Tr. 7, 22)

On December 11, 2009, Dave Hixon, the department store manager, asked Mr. Miller "...to come out of field service." (Tr. 4, Exhibit 1-p. 5) The employer wanted to reassign him to the shop mechanic position, which did not require the same technological skills as a field technician. (Tr. 5, 22-23) Additionally, if the claimant needed assistance, there were more avenues for assistance in the shop as opposed to the field. (Tr. 5) As a shop mechanic, he could "...gain more knowledge and confidence in the equipment..." (Tr. 6) Ms. Miller would no longer receive the 50-cent bonus he received as a field technician and would no longer have use of the company truck to drive to and from work. (Tr. 6, 9) Mr. Miller did have two personal vehicles: one his wife used as daily transportation; and the other was an old Ford pick-up that he did not like to depend on. (Tr. 9, 17-18) T

The claimant did not want to be taken out of the field and moved into the shop. (Tr. 6, 10) He raised concerns about having to purchase a new tool box, which the employer told him he could borrow from the employer as other employees had done. (Tr. 18) Mr. Miller told Mr. Hixon that he could fire him first, as he found it difficult to work in the employer's shop, and he didn't want to return there. (Tr. 8-9) Miller believed that eventually, the employer would fire him for being an older, injured employee. (Tr. 9-10, 23) The claimant quit rather than accept the reassignment, which he considered to be a substantial change in his contract of hire.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2009) 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(21) 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 left because of dissatisfaction with the work environment.

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).

Iowa Code section 96.6(2) (2009) 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 is 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....

Substantial evidence supports that the issues raised by Mr. Miller did not come under the purview of a voluntary quit based on a change in contract of hire. The record establishes that Mr. Miller was hired to work in the construction shop where he worked both as a shop technician and as a field technician throughout his employment. (Tr. 17, 23) The 50-cent pay reduction, which was a bonus based being a field technician, and the loss of the company truck issued due to the nature of his job responsibilities is *not* a significant change in contract of hire, as the claimant had access to other means of transportation. The fact that he had currently been working as a field technician is not probative that he was hired as such by contract or that he was guaranteed to remain in that position as the employer so testified. In fact, the employer refutes that the claimant or any other employee for that matter, was hired for a specific position. (Tr. 11) The employer has a right to assign their employees where they see fit. A change in one's working conditions is not equivocal to a change in a contract of hire. See, Woods, v. Iowa Department of Job Service, 315 N.W.2d 838 (Iowa App. 1981)

The claimant quit because he was dissatisfied with what would have been his work environment. See, 871 IAC 24.25(21), supra. Although Mr. Miller asserts that he would have difficulty working in the shop, the employer provided plausible reasons for why this change would benefit the claimant given his inability to master the technological advances and computer skills that were necessary to meet the growing demands involved with being a field technician. (Tr. 5, 6, 18) In addition, the employer fielded several customer complaints that were a direct result of the claimant's inability to effectively fulfill the duties of a field technician, which could negatively impact the employer's interests. Evidence supports that the employer took good faith measures to accommodate the claimant with additional time and training, which did not significantly improve the claimant's performance. This left the employer with no alternative but to either reassign him or terminate his employment. Mr. Miller argues that because of his age and previous health issues, the employer reassigned him with the intention to eventually terminate him. However, we find this argument is speculative and unsupported by the evidence. The burden is on the claimant to prove that his quit was with good cause and based on this record, we conclude that he has not satisfied that burden.

DECISION:

The administrative law judge's decision dated February 24, 2010 is **REVERSED**. The claimant voluntarily quit 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".

Monique F. Kuester

Elizabeth L. Seiser

AMG/fnv

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.

John A. Peno

AMG/fnv

Although this decision disqualifies the claimant for receiving benefits, those benefits already received shall *not* result in an overpayment. Nor will the employer's account be charged.

John A. Peno

Monique F. Kuester

Elizabeth L. Seiser

AMG/fnv