

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAMON A WRIGHT**  
Claimant

**APPEAL NO. 17A-UI-11074-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NORTHWEST BUILDERS OF IOWA INC**  
Employer

**OC: 03/12/17**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 18, 2017, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant voluntarily quit on September 27, 2017 for good cause attributable to the employer and based on a change in the contract of hire. After due notice was issued, a hearing was held on November 17, 2017. Claimant Damon Wright participated. Evan Grieme represented the employer and presented additional testimony through Zachary Stephens. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the employer's account may be charged for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Damon Wright was employed by Northwest Builders of Iowa, Inc. as a full-time carpenter/laborer from June 2016 until September 27, 2017, when he voluntarily quit the employment. From April 2017 until September 27, 2017, Mr. Wright performed work for the employer at a jobsite in the Omaha area. From April until the September 27, Mr. Wright's scheduled work hours were 8:30 a.m. to 6:30 p.m. on Monday and 7:00 a.m. to 5:30 p.m., Tuesday through Thursday. From April until the beginning of August, Dave Waller, was a foreman at the Omaha jobsite and the designated supervisor. When Mr. Waller left the company at the beginning of August, another foreman, Zachary Stephens, became the jobsite supervisor. The employer had an average of eight

employees working at the jobsite. All but Mr. Wright and one other employee traveled from the employer's shop to the jobsite in a pair of company vehicles on Monday morning, stayed in lodging during the workweek that was paid for by the employer, and returned home as a group in the company vehicle at the end of the workweek. Mr. Wright did not want to follow that routine due to his parental responsibilities. From April to September 27, Mr. Wright made the daily 79-mile commute from his home to the jobsite at his own expense. From April to September 27, Mr. Wright's wage for carpentry work performed at the Omaha jobsite was \$30.00 per hour. On each workday, the foreman would write each employee's start time and stop time on a spreadsheet-type document that the foreman and each employee would sign at the end of the shift.

Mr. Wright left the employment due to concerns that he was not being appropriately compensated for his work. During the period when Mr. Waller was the supervisor, Mr. Wright noted four of five instances in which Mr. Waller shaved 15 or 30 minutes off from the end of his shift to document that Mr. Wright had worked fewer hours than he had actually worked. After Mr. Stephens became the supervisor, Mr. Wright noted that shaving of his work hours increased to a frequency of two or three times per week, most frequently on Mondays. From April through September 26, Mr. Wright signed the daily work hour log despite his disagreement with documented hours.

Two things happened on the final day of the employment to trigger Mr. Wright's quit. First, Mr. Wright learned from a coworker that the employer was still paying for employee lodging near the jobsite. Mr. Wright had been led by the employer to believe that the employer had discontinued paying for lodging. If employees had to pay for their own lodging, that would undercut Mr. Wright's argument that he should be compensated for his commuting expense. Secondly, when Mr. Stephens presented Mr. Wright with the work hours log for his signature, Mr. Wright noted that Mr. Stephen's had shaved 30 minutes off the start of his shift and 30 minutes off the end of his shift so that the log would make it appear that Mr. Wright was working at the jobsite an hour less than he had actually worked that day. When Mr. Wright reviewed the work hours that Mr. Stephens had documented for him, he told Mr. Stephens that he was not going to sign the log. Without telling Mr. Wright, Mr. Stephens had decided to start documenting employee start times as the time when Mr. Stephens arrived to open the work trailer, even if that was after Mr. Wright's scheduled start time and Mr. Wright had been waiting at the jobsite since his scheduled start time. When Mr. Wright left the jobsite on September 27, he sent a text message to the business owner, Even Grieme, indicating that he would not be returning to the employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

Iowa Admin. Code r. 871-24.26(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 weight of the evidence in the record establishes a voluntary quit for good cause attributable to the employer based intolerable and detrimental working conditions and on a substantial change in the conditions of the employment. Each good cause basis for the quit arise from the employer's practice of shaving time off Mr. Wright's worked hours, thereby stealing wages from Mr. Wright. Mr. Wright left the employer after the employer increased the frequency of the hours-shaving behavior and on the day where the employer shaved time from both the start and end of his workday. The employer presented insufficient evidence to rebut Mr. Wright's credible testimony that the employer was indeed shaving his work hours and, thereby stealing from his wages. When asked by the administrative law judge for particulars concerning work hours documented for Mr. Wright, each of the employer's witnesses provide the hollow response that he could not speak to the particulars because that documentation was with the employer's accountant.

Because the evidence establishes a voluntarily quit for good cause attributable to the employer, Mr. Wright is eligible for benefits, provided he meets all other eligibility requirements, and the employer's account may be charged for benefits.

**DECISION:**

The October 18, 2017, reference 02, decision is affirmed. The claimant voluntarily quit the employment on September 27, 2017 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs