

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN M MEDINA
Claimant

APPEAL NO. 09A-UI-16136-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOELLER REPAIR INC
Employer

**Original Claim: 10/04/09
Claimant: Appellant (4-R)**

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Juan Medina filed a timely appeal from the October 22, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 2, 2009. Mr. Medina participated. Tammy Moeller, Office Manager, represented the employer and presented testimony through Boe Winey, Dallas Moeller, Ross Moeller, and Steven Hartwig.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Juan Medina was employed by Moeller Repair as a part-time laborer from April 2009 until September 22, 2009, when he voluntarily quit. The employer repairs wood pallets. Mr. Medina's immediate supervisor was Steve Hartwig, Shop Supervisor. Mr. Medina's cousin also worked for the employer. Mr. Medina was one of three Latinos who worked in the employer's shop. The remainder of the shop personnel was non-Hispanic.

On Mr. Medina's last day in the employment, he got into a verbal dispute with another employee over the music that playing in the workplace. The verbal dispute culminated in Mr. Medina grabbing a 2 X 4 board and threatening to beat a non-Hispanic coworker if he changed the music back to the local station that generally played in the workplace. The employer resolved the problem, in part, by removing the radio/cd player from shop over the lunch hour. The employer intended to discharge Mr. Medina when he returned from lunch based on the violent behavior. Mr. Medina returned from lunch and told the employer he and his cousin were quitting and asserted that the shop was racist. This ended Mr. Medina's employment.

Mr. Medina's quit was also based on two additional factors. The first was that he thought the non-Hispanic workers were lazy and that he and his cousin were not sufficiently rewarded for their hard work with additional work hours. The second additional basis for the quit was a reduction in work hours that had gone into effect at the beginning of August. Though Mr. Medina and the employer called the employment full-time, Mr. Medina had averaged

32 hours per week during the employment and generally worked fewer than 40 hours per week. The change in work hours at the beginning of August followed a brief four-week period during which Mr. Medina had worked 40 hours in three out of the four weeks.

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.

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.

The weight of the evidence indicates that Mr. Medina quit due to dissatisfaction with the work environment. Such quits are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21). The evidence fails to indicate that the shop environment was racist. The evidence indicates instead that one non-Hispanic employee made culturally insensitive remarks to Mr. Medina during the dispute over the music and that Mr. Medina was equally culturally-insensitive in his conduct and remarks. The evidence indicates that the employer did not condone the conduct of either employee and attempted to resolve the matter by removing the object of the dispute, the radio/cd player.

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 weight of the evidence indicates that Mr. Medina's work hours were generally less than 40 per week and that full-time hours were the exception rather than the norm. The weight of the evidence indicates that Mr. Medina had acquiesced in the reduction in work hours that began at the start of August by continuing in the employment several weeks after the reduction went into effect.

Based on the evidence and the law, the administrative law judge concludes that Mr. Medina voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Medina is disqualified for benefits based on wages earned through this employment until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Medina.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits, may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

The weight of the evidence establishes that the employment was part-time. Accordingly, a quit from the part-time employment would not completely disqualify Mr. Medina for unemployment insurance benefits. Mr. Medina would remain eligible for benefits based on *other* base period employment, provided he is otherwise eligible. This matter will be remanded to the Claims Division for redetermination of Mr. Medina's eligibility for *reduced* benefits.

DECISION:

The Agency representative's October 22, 2009, reference 01, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits based on wages earned from this employment until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged. Because the employment was part-time, the claimant is eligible for benefits based on *other* base period employment, provided he is otherwise eligible. This matter is remanded to the Claims Division for redetermination of claimant's eligibility for *reduced* benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw