

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOHN L ROMINE
4140 E 28TH
DES MOINES IA 50317

SHRIJEE INC
HOLIDAY INN EXPRESS
2602 SE CREEKVIEW DR
ANKENY IA 50021

Appeal Number: 04A-UI-10232-S2T
OC: 08/22/04 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

John Romine (claimant) appealed a representative's September 9, 2004 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Shrijee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 13, 2004. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The employer owned Shrijee, Holiday Inn Express, and Jala, Fairfield Inn & Suites. The address for the employer is the same at both establishments. The claimant was hired by Ed Patel to work at both locations on June 1, 2003, as a building maintenance person. He was promised full-time hours and worked 40 hours per week until he suffered a work-related injury on November 30, 2003. The claimant could not work due to the injury for three weeks. When he returned to work, he was restricted to light duty. The claimant underwent surgery for his work-related injury on or about February 15, 2004. He returned to work with restrictions on or about March 15, 2004. On or about April 15, 2004, the claimant was released to return to work without restrictions.

Ed Patel left the country for a vacation and put Dennis Patel in charge of the claimant. Dennis Patel did not give the claimant 40 hours of work per week because work was not available. Dennis Patel told the claimant to work at a third location to obtain work hours. He asked the claimant to install a garage door and opener at his home. By the end of May 2004, the claimant was being given approximately two hours of work per day. The claimant complained to the general manager that he could not continue to work with so few hours. The claimant left messages for Dennis Patel, but Dennis Patel could not be contacted and did not return the claimant's messages. The claimant stopped appearing for work after June 5, 2004. He was waiting for contact from Dennis Patel. Finally on August 22, 2004, when the claimant did not hear from Dennis Patel, the claimant applied for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes he did not.

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.

A 25 percent to 35 percent reduction in working hours is, as a matter of law, a substantial change in the contract of hire. A substantial pay reduction creates good cause attributable to the employer for a resignation. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). An employee must give prior notice to the employer before quitting due to a change in the contract of hire. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant quit work because the employer reduced the claimant's hours. A change in one's hours or shift is a substantial change in one's contract for hire. The employer substantially changed the claimant's contract for hire and, therefore, the separation was not voluntary. The claimant gave the employer notice but the employer did not respond. The claimant left work

due to a change in the contract for hire. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's September 9, 2004 decision (reference 01) is reversed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

bas/s