

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY E SIGLER
Claimant

APPEAL NO. 13A-UI-10290-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABRAHAM SIGLER
Employer

OC: 08/04/13
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Timothy Sigler filed a timely appeal from the August 29, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 3, 2013. Timothy Sigler participated. Abraham Sigler represented the employer and presented additional testimony through Margaret Sigler.

ISSUE:

Whether Timothy Sigler's voluntary quit was for good cause attributable to the employer. It was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Abraham Sigler is a vision-impaired individual who operates a vending machine business. Abraham Sigler started his vending business in June 2012. Most of the vending machines are located in the Hoover Office Building on the Capitol Complex in Des Moines. Abraham Sigler cannot drive and relies on others to perform that task for him. Timothy Sigler is Abraham Sigler's father. Margaret Sigler is Abraham Sigler's wife and Timothy Sigler's daughter-in-law. Margaret Sigler has other employment and is involved in Abraham Sigler's vending business only to the extent necessary and as a stop-gap measure.

Timothy Sigler began working for Abraham Sigler as a full-time driver and laborer in June 2012. The agreed upon wage was \$10.00 per hour. At the time of hire, Timothy Sigler and Abraham Sigler discussed the prospect of Timothy Sigler receiving a raise within the first year of employment, provided business revenue supported such a raise. No set amount or set deadline for the raise was discussed. Timothy Sigler resided in Nevada, Iowa throughout the employment. At the start of the employment, Abraham Sigler resided in Ames. Timothy Sigler would drive his Honda Civic to Abraham Sigler's home in Ames. Timothy Sigler and Abraham Sigler would then get in Timothy Sigler's company vehicle and drive to Des Moines. Timothy Sigler was responsible for transportation expenses related to his commute from his home to Abraham Sigler's home. Abraham Sigler, or his business, was responsible for transportation expenses from Abraham Sigler's home to the Hoover Building in Des Moines.

In January 2013, Abraham Sigler provided Timothy Sigler with a \$1.00 per hour raise to bump Timothy Sigler's wages to \$11.00 per hour.

At the beginning of April Abraham Sigler and his spouse moved their residence to Ankeny. From that point onward, Timothy Sigler commuted from his home in Nevada to Abraham Sigler's home in Ankeny. Abraham Sigler continued to provide transportation from his home to the Hoover Building.

In June 2013, Timothy Sigler notified Abraham Sigler that he was dissatisfied with his pay. Though Timothy Sigler had received a \$1.00 per hour raise in January or February 2013, he believed Abraham Sigler should give him another raise since the employment was at the one year mark. Abraham Sigler declined to provide a raise at that time. Thereafter, Timothy Sigler was frequently absent from work without notifying Abraham Sigler. After the workday had ended, Timothy Sigler would contact Abraham Sigler about his desire and need for more money. Timothy Sigler's absences created a hardship that required Margaret Sigler to take time away from her employment to provide transportation to Abraham Sigler to support his business. On June 19, 2013, Timothy Sigler notified Abraham Sigler 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:

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.

871 IAC 24.25(13), (30) provides:

Voluntary quit without good cause. 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 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. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

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).

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.

Timothy Sigler knew the wage, \$10.00 per hour, when he accepted the employment. There was no specific agreement regarding the timing, amount, or definiteness of any future raises at the start of the employment. Regardless, the employer provided Timothy Sigler with a \$1.00 per hour, or 10 percent, raise in January 2013. Timothy Sigler knew from the start of the employment that he would need to commute to Abraham Sigler's home as part of the employment. The initial commute was from Nevada to Ames, about 10 miles. At the beginning of April 2013, Abraham Sigler did substantially change the conditions of the employment by moving to Ankeny and thereby tripling Timothy Sigler's commuting distance to about 30 miles each way. However, Timothy Sigler elected to continue in the employment for more than two months before he announced his dissatisfaction with the arrangement and demanded more money from the employer. Timothy Sigler made a conscious decision to continue in the employment after Abraham Sigler moved to Ankeny. By remaining in the employment for more than two months after the change in the conditions, Timothy Sigler effectively acquiesced in the changed conditions. Timothy Sigler's decision to quit the employment was without good cause attributable to the employer. Timothy Sigler is disqualified for benefits 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.

DECISION:

The agency representative's August 29, 2013, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs