IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ROBERT V EIKE Claimant **COLORFX LLC** Employer	**APPEAL 16A-UI-10602-H2** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/04/16** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 20, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in person hearing was held in Des Moines, Iowa on October 18, 2016. Claimant participated. With the claimant at hearing was his wife Kathie Eike who did not offer any testimony. Employer participated through Mike Poulter, Supervisor and (representative) Terie Tishim, Human Resources Manager.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a "cutter" under the classification of bindery operator beginning on March 7, 2011, through August 31, 2016 when he voluntarily quit. The claimant was hired with the understanding that he would work a 12 hour shift or what the company refers to as the "five star shift". The claimant's normal work schedule was 12 hours on Monday, Tuesday and Wednesday and every other Sunday. Another cutter would work the opposite shift of claimant. Additionally the employer had two other cutters who would work 12 hours on Thursday, Friday and Saturday and every other Sunday. The employer thus had 24 hour coverage, 7 days per week on the cutter position. The employer had moved to the 12 hour shifts 5 or 6 years previously when they sold 2 of their 6 cutting machines. When the claimant was hired he knew that the required hours of work would be the 12 hour shifts. While other employees who work under the classification bindery operator are allowed to work an 8 hour shift, there are no employees who are classified as cutters who work less than the required 12 hour shifts.

During the entire time of his employment, the claimant never filed any type of work related injury claim. He sought medical treatment through his own health insurance for his hands, back and feet. No doctor has ever advised the claimant that he needed to work less than a 12 hour shift.

No doctor has offered the medical opinion that the claimant's hand, back or foot issues were due to a work related illness or injury or that his work aggravated any injury.

In December 2015 the claimant turned 65 and began talking to his coworkers, including his supervisor, Mr. Poulter about retiring. In January, February and March of 2016 he told Mr. Poulter that he would be taking retirement sometime in June, July or August 2016. The claimant plans to apply for social security benefits when he turns 65 in December 2016.

On August 24 the claimant approached Mr. Poulter and told him that he would be willing to work through November 2016 if the employer would allow him to only work 8 hours per shift instead of the normal 12. If the employer would not allow the 8 hour per day shifts, then the claimant told Mr. Poulter that his last day of work would be August 31. The claimant also told Mr. Poulter that when he left he would be finding a part-time job in addition to continuing to run his own printing business on the side as he had for many years. Mr. Poulter told the claimant that it was not his decision to make, but that he would go to the production manager J.R. and see if he would approve the change of hours. Mr. Poulter told J.R. what the claimant proposed and J.R. told Mr. Poulter he would get back to him with a decision. On August 29 the claimant approached Mr. Poulter asking if he had heard from J.R. about his proposal. Mr. Poulter then contacted J.R. for a decision. J.R. told Mr. Poulter that the employer could not allow the claimant to work an 8 hour shift and that the claimant would have to work his regular 12 hour shift. The claimant then quit because the employer would not allow him to reduce his 12 hour shift to an 8 hour shift. J.R. learned that the claimant would be leaving on August 31 so had a retirement check cut for him as well as ordering a cake. If the claimant had been willing to continue working the required 12 hour shifts, under the "five star shift" program, continued work was available for him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code §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.

Iowa Admin. Code r. 871-24.25(18) 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:
>
> (18) The claimant left because of a dislike of the shift worked.

Iowa Admin. Code r. 871-24.25(24) 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:
>
> (24) The claimant left employment to accept retirement when such claimant could have continued working.

Iowa Admin. Code r. 871-24.25(27) 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:
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> (27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

No doctor has offered the opinion that any of the claimant's medical issues are due to a work related illness or injury. No doctor instructed or recommended that the claimant work less than the 12 hours shifts. Claimant has not established that his leaving work was due to any work related medical issue. Nor has the claimant established that his work aggravated any medical condition. The claimant is only alleging an injury after his employment ended in an attempt to bolster his claim for benefits.

The claimant knew when he was hired that he would be required to work 12 hour shifts. The employer was under no obligation to accommodate the claimant's request for less than 12 hours shifts. The claimant was treated the same way as other cutters working in the five star program. The claimant voluntarily chose to quit working rather than work the schedule 12 hours shifts. While claimant's decision to quit may have been based upon good personal reasons it was not a good-cause reason attributable to the employer for leaving the employment. Benefits are denied.

DECISION:

The September 20, 2016, (reference 01) decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such

time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs