

**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**

**JACKIE A GOODMAN
1106 PLAINVIEW LANE
ALBERT LEA MN 56007**

**FLEETGUARD INC
c/o HUMAN RESOURCES
311 N PARK ST
LAKE MILL IA 50450**

**Appeal Number: 04A-UI-12567-DWT
OC: 10/24/04 R: 12
Claimant: Respondent (1)**

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 are 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:

Fleetguard, Inc. (employer) appealed a representative's November 22, 2004 decision (reference 01) that concluded Jackie A. Goodman (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualified him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 15, 2004. The claimant participated in the hearing. Roseanne Larson and Ryan Schriever appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on February 2, 2004. The employer hired the claimant to work full time. Initially, the claimant worked on the line. Shortly after hiring the claimant, the employer transferred him to the warehouse and had him drive a forklift. The employer considered the forklift position a temporary transfer to the warehouse department. As a warehouse employee the claimant earned \$13.89 per hour.

The claimant injured his knee at work on July 9, 2004. When the claimant was released to return to work in late August, he was restricted to light-duty work. The employer assigned him to work on the line with this work restriction. The employer, however, still considered the claimant a warehouse employee and paid him \$13.89 per hour.

On September 23, 2004, the employer posted a full-time forklift operator position. This was the job the claimant had been assigned to on a temporary basis in March 2004. The claimant did not apply for this job because he wanted and applied for a shipping coordinator's job that was posted a few days later. The shipping coordinator's job paid a higher wage. The claimant believed he had been performing the shipping coordinator's job duties and was capable of performing this job.

When the employer hired a person to work as a full-time forklift operator, the claimant's temporary job or transfer no longer existed. On October 10 when the claimant went to punch in, he discovered he did not have a timecard in the warehouse. The employer then told the claimant that he was no longer considered a warehouse employee, would not be driving a forklift again, and would work on the line. The employer also told the claimant that effective immediately his hourly wage would be reduced by \$2.79 per hour. The employer would no longer pay the claimant wages he earned as a warehouse employee.

The employer already knew the claimant had problems working on the line. The claimant had reported problems he had with other employees who worked on the line. After learning his hourly wage would be reduced and he would not be returning to the warehouse, the claimant walked out and did not return to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant quit his employment on October 10, 2004, when he walked out and did not return to work. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant leaves employment with good cause when he quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The evidence indicates that with the exception of first month of employment, the claimant earned \$13.89 per hour while working for the employer. The employer asserted the claimant earned this hourly wage only because he had been temporarily transferred to the warehouse department. The employer continued paying this wage even after the claimant was injured at work and restricted to

light-duty work. With the claimant's light-duty work restrictions, he could not work as a forklift operator. The evidence indicates when the employer hired a full-time forklift operator; the claimant's temporary job assignment ended and he could no longer be considered a warehouse employee. The claimant had no idea the employer would change his hourly wage when another person was hired to work as a full-time forklift operator. The employer then assigned the claimant to a job, the employer knew the claimant did not like and immediately reduced his hourly wage by 20 percent. The employer asserted the reason for the wage reduction was not the fault of the employer. In Wiese v. Iowa Department of Job Service, 389 N.W.2d 676 (Iowa 1986), the Iowa Supreme Court stated: "We believe that a good faith effort by an employer to continue to provide employment for his employees may be considered in examining whether contract changes are substantial and whether such changes are the cause of an employee quit attributable to the employer."

In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in hours was, as a matter of law, a substantial change in the contract of hire. Further, while citing Wiese with approval, the Court stated that:

It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer.... [G]ood cause attributable to the employer can exist even though the employer be free from all negligence or wrongdoing in connection therewith.

(Id. at 702.) Dehmel the more recent case is directly on point with this case. Therefore, the fact the pay reduction may have been due to circumstances beyond the employer's control, under the reasoning of Dehmel, is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer.

The next issue is whether a 20 percent pay reduction is a substantial change in the contract of hire. The Court in Dehmel concluded a 25 percent to 35 percent pay reduction was substantial as a matter of law, citing cases from other jurisdictions that had held reductions ranging from 15 percent to 26 percent were substantial. Id. at 703. Based on the reasoning in Dehmel, a 20 percent reduction in pay is also substantial. The claimant established good cause to leave or quit this employment. As of October 24, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 22, 2004 decision (reference 01) is affirmed. The claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of October 24, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b