

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIM A BENEFIEL
Claimant

APPEAL NO. 08A-UI-03599-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALTER J RILEY MD
Employer

**OC: 03/16/08 R: 02
Claimant: Respondent (1)**

Section 96.5-1 - Voluntary Quit
871 IAC 24.26(1) – Voluntary Leaving – Change in Contract of Hire

STATEMENT OF THE CASE:

Walter J Riley MD (employer) appealed a representative's April 4, 2008 decision (reference 01) that concluded Kim Benefiel (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Des Moines, Iowa, on May 27, 2008. The claimant participated personally. The employer was represented by Gordon Fischer, Attorney at Law, and participated by Dorothea Porter, Office Manager, and Walter Riley, Owner. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in October 1998, as a full-time clerk working from 9:00 a.m. to 6:00 p.m. In August 2001, the claimant submitted her two-week notice of resignation because she wanted to work from 8:30 to 5:00 p.m. with another employer. In order to keep the claimant from leaving to work in another office, the office manager told the claimant that she could work from 8:30 to 5:00 p.m. The claimant asked if the agreement should be placed in writing. The office manager told the claimant that it was not necessary and the change would be permanent.

Between August 2001 and the end of the claimant's employment the office manager tried to change the claimant's hours back to 9:00 a.m. to 6:00 p.m. Each time the claimant reminded the office manager of the agreement and the hours remained at 8:30 a.m. to 5:00 p.m.

The claimant and the office manager both smoked. Both went outside to smoke. From time to time the employer spoke to the claimant about quitting. The office manager asked the claimant

to make certain she moved away from the door so the smell would not come into the office. The office manager put her cigarette butts under the rug in the entry way.

The employer noticed the smell of fresh smoke in the mornings when he arrived at work. He thought the claimant was smoking inside the office before other employees arrived. The employer told the office manager to change the claimant's hours to 9:00 a.m. to 6:00 p.m. so the claimant would not be in the office and smoking before other employees arrived. On March 13, 2008, the office manager told the claimant her hours would change as of March 17, 2008. The office manager did not tell the claimant the reason for the change. The claimant again reminded the office manager of the agreement. The claimant said she would quit work rather than change her hours. The claimant's last day of work was March 14, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

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 24.26(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.

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 changed her hours. A change in one's hours or shift is a substantial change in one's contract for hire. The claimant clearly stated she would quit if her hours were changed. The employer substantially changed the claimant's contract for hire and, therefore, the separation was not voluntary. The claimant is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

DECISION:

The representative's April 4, 2008 decision (reference 01) is affirmed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs