

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AMY J BREESE**

Claimant

**AREA SUBSTANCE ABUSE COUNCIL INC**

Employer

**APPEAL 19A-UI-01478-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/20/19**

**Claimant: Respondent (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Overpayment of Benefits

Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire

Iowa Admin. Code r. 871-24(10) – Participation in Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the February 13, 2019 (reference 01) unemployment insurance decision that held claimant was eligible for unemployment insurance benefits and that the employer's account may be charged for benefits paid. The parties were properly notified about the hearing. A telephone hearing was held on March 6, 2019. Claimant participated personally. Employer participated through witnesses Samantha Rogers and Valerie Sleege. Claimant's Exhibits A through E were admitted. Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

Was the claimant overpaid benefits?

Is the employer's account subject to charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as an accountant from September 10, 2018 and was separated from employment on January 24, 2019, when she voluntarily quit. Barb Gay hired the claimant. When the claimant was hired, Ms. Gay told her that she would receive 40 hours of volunteer paid leave time off upon hire. She was also told that she could use this leave at her discretion for her volunteer work. Claimant took one day of paid volunteer time off on October 22, 2018. In December of 2018, claimant requested two days off for volunteer time and her new supervisor, Ms. Sleege, denied her request. Ms. Sleege told the claimant that she could no longer use volunteer time off until she completed her six-month probationary period. Claimant complained about this issue to Ms. Sleege in her written evaluation on December 26,

2018. See Exhibit A. No changes were made to allow claimant to use her paid volunteer time off. Claimant tendered a written resignation effective January 24, 2019.

Claimant has received benefits of \$2,821.00 from January 20, 2019 through March 2, 2019. The employer did participate in the fact-finding interview.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

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. 871-24.26(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.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions.

However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Although claimant was not required by law to give the employer notice of her intent to quit, the change to the terms of hire must be substantial in order to allow benefits. In this case, the claimant lost four days of paid leave when Ms. Sleege told her that she was no longer allowed to use the leave during her probationary period. This change of the original terms of hire is

substantial. Thus, the separation was with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible. Because benefits are allowed, the issue of overpayment is moot. The employer may be charged for benefits paid.

**DECISION:**

The February 13, 2019 (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs