IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

OSVALDO E QUINTANA
Claimant

AXCESS STAFFING SERVICES LLC
Employer

APPEAL NO. 11A-EUCU-00637-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/26/11
Claimant: Respondent (1)

Iowa Code § 96.5(1)j – Voluntary Leaving (Temporary Assignment)

STATEMENT OF THE CASE:

The employer filed an appeal from the July 26, 2011 (reference 02) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on September 14, 2011. Claimant participated through interpreter, Ninfa Redmond. Employer participated through onsite manager, Dennis Panosh and was represented by Amelia Gallagher of TALX.

ISSUE:

The issue is whether claimant voluntarily left the employment with 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 temporary full time as a packer and occasional crew leader in an ongoing assignment at Proctor & Gamble in Iowa City and was separated from employment on January 20, 2011. He was told to report at 1:30 p.m. but there was regularly no work until 4:00 p.m. and sometimes he reported and was sent home due to a lack of work. Employees are not paid for waiting time prior to the shift start time but may not get work if they do not arrive a couple of hours early. He told Irma, Axcess second shift supervisor as well as the first shift supervisor of his concerns. He moved to Miami three days after his separation and had thought about moving several weeks before when his hours began declining in November 2010 the week before Thanksgiving.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with 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.

871 IAC 24.26(4) 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:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

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.

A notice of an intent to quit had been required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 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 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005). 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. EAB*, 433 N.W.2d 700 (Iowa 1988).

Since his move did not occur until after the separation and was made only after the diminution of hours, it is not disqualifying. Inasmuch as the claimant's hours were cut since Thanksgiving was a substantial change of the original terms of hire and the requirement to report two hours early without pay, and with no assurance of work that day, amounted to intolerable and detrimental working conditions. Thus the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The July 26, 2011 (reference 02) decision is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld shall be paid to claimant.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css