

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LARRY J DUNN
Claimant

REM IOWA COMMUNITY SERVICES INC
Employer

APPEAL 17A-UI-09623-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/16/17
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 12, 2017, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 6, 2017. Claimant participated. Attorney Emma Shimanovsky participated on claimant's behalf. Employer participated through area director Angie Reisdorf. Official notice was taken of the administrative record, including claimant's wage history, with no objection. Claimant Exhibit A was admitted into evidence with no objection. Official notice was taken of the administrative record, including claimant's wage history, with no objection.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a direct support professional from April 13, 2013, and was separated from employment on August 28, 2017, when he quit.

On August 2, 2017, the employer approached claimant regarding a reduction in hours. The employer told claimant that his hours were going to be reduced from seventeen hours per week to eight hours per week. Claimant told the employer it was not enough hours. The employer told claimant it needed to know if he was going to accept the change by August 15, 2017.

On August 15, 2017, the employer spoke to claimant again about his reduction in hours. Claimant told the employer it was not enough hours. Claimant did not tell the employer if he would accept the reduction in hours.

On August 28, 2017, claimant met with the program director and Ms. Reisdorf. The employer met with claimant to discuss claimant's shift schedule (had not received an answer since August 2, 2017 about whether he accepted the schedule) and to discuss an incident that occurred on August 23, 2017. Ms. Reisdorf had let claimant know he was going to receive a

verbal warning for the August 23, 2017 incident. During the meeting on August 28, 2017, the employer handed claimant his new hours effective September 18, 2017. Claimant Exhibit A. Claimant hours were being reduced from a guarantee of seventeen hours per week to only a guarantee of eight hours a week. The employer told claimant that these were all the hours they had to offer to him. Claimant was told he was also not needed as a second staff due to funding, which reduced his hours below his guaranteed seventeen hours. Claimant told the employer he could not accept the reduction in hours, he walked out, and quit.

On August 30, 2017, the employer then sent claimant a letter requesting he contact it within three business days of receipt. Claimant did call Ms. Reisdorf within three days of receipt of the letter (around September 5, 2017). Claimant told Ms. Reisdorf that the employer was not offering him enough hours and he needed more hours. Ms. Reisdorf told claimant that was all the hours the employer had to offer.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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 recently 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).

On August 28, 2017, the employer presented claimant in writing with his new schedule, reducing his previously guaranteed seventeen hours per week to only eight hours per week. Claimant Exhibit A. Inasmuch as claimant would suffer approximately a fifty percent reduction in hours, and the employer has not established misconduct as a reason for the reduction, the change of the original terms of hire is considered substantial. Thus, the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The September 12, 2017, (reference 03) unemployment insurance decision is reversed. Claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs