

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

JODI A FELLER
39482 HWY 64
PRESTON IA 52069

DYNAMIC TUBE INC
PO BOX 760
MAQUOKETA IA 52060-0760

Appeal Number: 04A-UI-03438-BT
OC: 02/29/04 R: 04
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 is 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:

Dynamic Tube, Inc. (employer) appealed an unemployment insurance decision dated March 22, 2004, reference 01, which held that Jodi Feller (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 19, 2004. The claimant participated in the hearing. The employer participated through Dan Pawlowski, President. Employer's Exhibits One and Two were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the previous company, Dynamic Metal Forming, since July 5, 1997. Dynamic Tube, Inc. (DTI) purchased assets of the former company on August 6, 2003 and hired the claimant on August 7, 2003 as full-time systems support. The claimant worked from August 2003 through February 2004 when the employer changed the terms of the contract of hire. The changes were effective as of February 23, 2004 and the employees' only options were to accept the changes or quit. The most significant changes consisted of reduced pay from \$12.79 to \$12.48 per hour; reduced vacation days from 15 to 12.5; reduced holidays from 11 to 8; reduced medical and dental costs along with reduced coverage; and a reduced 401K contribution from 50 to 25 percent. The new medical and dental policy no longer included orthodontics and vision coverage and the vacation and holidays were to be reduced even further in the following year. The claimant did not accept the new terms of employment and voluntarily quit on February 27, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant voluntarily quit on February 27, 2004 after being advised of a change in the contract of hire. When a claimant voluntarily quits, she bears the burden of proving that the voluntary quit was for a good reason that would not disqualify her. Iowa Code Section 96.6-2. Almost every aspect of the claimant's employment package was being changed. Her wages, vacation, and holidays were reduced, her insurance coverage was reduced and the employer's 401K contribution was reduced by half. These are considered to be a substantial change in the claimant's contract of hire. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988).

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.

The law presumes a claimant has left employment with good cause when she quits because of a change in the contract of hire. 871 IAC 24.26(1). However, in order to show good cause for leaving employment based on a change in the contract of hire, an employee is required to take the reasonable step of informing the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). In the case herein, the claimant could either accept the new contract of hire or quit her employment since the changes were not negotiable. Notice would therefore be futile. The claimant's voluntary quit was with good cause attributable to the employer and benefits are allowed.

DECISION:

The unemployment insurance decision dated March 22, 2004, reference 01, is affirmed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

sdb/b