IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

RAE KING Claimant **RETAIL EXECUTION WEST LLC** Employer	**APPEAL 21A-UI-03284-SN-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/01/20** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit
871 IAC 24.26(1) – Voluntary Leaving – Change in Contract of Hire

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 14, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on March 22, 2021. Claimant participated and testified. Employer participated through Market Sales Manager Rod Miller.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

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

The claimant was employed full-time as a territory sales lead from June 30, 2019 until she was separated from employment on October 18, 2020, when she quit. The claimant's immediate supervisor was Market Sales Manager Rod Miller. The claimant's starting pay was $14.00 per hour.

The employer uses third party recruiters to fill its positions. During the conversation prior to her hire, the recruiter (name unknown) informed the claimant she would work an average of 50 hours per week. She was told if the part-time workers under her were unable to work a shift, then she would have to cover their shifts. The recruiter told her that she would receive a $1.00 raise after working for the employer for six months. The recruiter told her that she would have a part-time subordinate for each of the four Wal-Mart stores assigned to her.

After being hired, the claimant was trained for a week and a half by Russ Ahlhelm. Mr. Ahlhelm had been with the company for 16 years. Despite his experience, the claimant graduated from the training program uncertain how to complete many tasks. One example she providing was setting up electronic demonstrations. The claimant frequently felt like she needed to ask Wal-

Mart associates how to complete these tasks. The employer had tutorials for completing many of these tasks in an application installed on its work phones.

The claimant's hours also were substantially higher than contemplated at the time of her hire. The claimant averaged between 65 and 70 hours per week. Rather than being given a part-time associate for each of her four stores, the claimant only received two for part of the time. These part-time associates were woefully inadequate. One of them had incredibly unreliable attendance habits. The other was accused of sexual harassment by a Wal-Mart employee. Solving these issues was more work than the claimant was assisted by these associates. Furthermore, these part-time subordinates typically would just complete the easy tasks and leave the most difficult tasks for her to complete. Many times the part-time associates would state tasks were complete, but they were not. This would force the claimant to complete their tasks without the original instructions. The claimant had part-time workers from other areas fill in occasionally, but this help was too fleeting.

The claimant brought up her scheduling concerns to Mr. Miller several times. Mr. Miller replied that the claimant had to manage the expectations of store managers assigned to her area given that they were understaffed. Mr. Miller recognized this would infuriate store managers, but stated it was part of the position. Wal-Mart store managers were continuously disappointed in the claimant's work which made her work very stressful.

In late September or early October 2020, Mr. Miller sent the expected hours the claimant was supposed to work for the first week in October 2020. The expected amount of hours she would have to work that week was 95 hours according to the employer's artificial intelligence software. While this was not a guarantee of that many hours, it was an estimate and it was a certainty it would be a very busy week. The second week in October was also a very busy week.

On October 4, 2020, the claimant submitted her resignation effective October 18, 2020, to Mr. Miller in an email. In her resignation letter, the claimant stated she was overworked and insufficiently paid. After receiving the email, Mr. Miller called the claimant and offered to place her in a part-time position.

The claimant worked her remaining two weeks as outlined in her resignation notice.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with good cause attributable to the employer.

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:

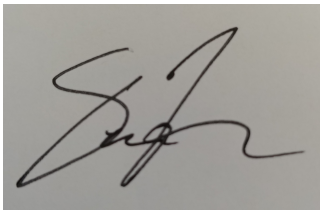
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes 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.

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). Claimant was not required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment if employer had or should have had reasonable knowledge of the condition. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Inasmuch as the claimant was averaging a 17% to 34% increase in her hours and enjoyed far fewer part-time assistants than what she was promised at the time of hire. In the weeks prior to her resignation, the expected hours she was supposed to work one week was almost double what was contemplated at the time of her hire. While the administrative law judge notes the employer's efforts to correct this situation, 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 January 14, 2021, (reference 01), decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.



Sean M. Nelson
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March 24, 2021
Decision Dated and Mailed

smn/kmj