**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL M JAY**
Claimant

**RUAN TRANSPORT CORPORATION**
Employer

**APPEAL NO: 13A-UI-03514-DT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 02/17/13**
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Daniel M. Jay (claimant) appealed a representative's March 15, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment after a separation from employment from Ruan Transport Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 25, 2013. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit for a good cause attributable to the employer?

**OUTCOME:**

Modified. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on or about March 23, 2012. He worked full time as an overnight regional truck driver, working out of the employer's business client's Cedar Falls, Iowa distribution center. His last day of work was January 25, 2013. He voluntarily quit work on February 18, 2013.

On January 24 the claimant had backed under a red light in the dock. As a result, on January 25 one of the claimant's supervisors told him he would be placed on suspension pending investigation of a safety violation. On January 30 the claimant's supervisor informed him that he was being removed from his full time position and being moved into a part-time basis. However, the supervisor indicated that this was not because of any safety violation on January 24, for which he told the investigation was closed with no action, but because of the claimant's attendance in 2012. In 2012 the claimant had missed 10 or 11 days of work due to

illness, for which he had provided doctor's notes. He had not missed any additional days in January 2013.

The claimant was not willing to accept the change in his hours to part time. He was summoned into a meeting on February 18 in which he was essentially told he could either accept the demotion or he could quit, so he told the employer that he quit.

**REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. 871 IAC 24.26(1). A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for reduce the claimant to part time, the change in the claimant's job which had been implemented was a substantial change in the claimant's contract of hire. *Dehmel*, supra. [1]Benefits are allowed.

**DECISION:**

The representative's March 15, 2013 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/css

[1] To the extent that the claimant's demotion might be considered disciplinary action and there might be any review as to whether the change was due to work-connected misconduct, the administrative law judge notes that the employer did not make the change for the initially asserted safety violation, but relied instead on the claimant's absenteeism to make the change. Excessive and unexcused absenteeism can constitute misconduct, but absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). Because the final absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification would be imposed.