IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DAVID W RIPPERGER
Claimant

MENARD INC
Employer

APPEAL NO. 08A-UI-06836-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/29/08 R: 02
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Menard, Inc. (employer) appealed a representative's July 23, 2008 decision (reference 01) that concluded David W. Ripperger (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 11, 2008. The claimant participated in the hearing and presented testimony from one other witness, David Cooper. Mark Dardis appeared on the employer's behalf and presented testimony from one other witness, Jim Julian. Based on the evidence, the arguments of the parties, 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?

FINDINGS OF FACT:

The claimant started working for the employer at its Des Moines, Iowa store on August 4, 2003. Prior to April 13, 2008 he had worked full time as an account service representative on a salary plus commission basis in which he averaged approximately $15.15 per hour. The claimant had suffered a work-related injury and had been off work and receiving workers' compensation for a period of time. He was ultimately determined to be at maximum medical recovery and released from medical care. However, as a result he had a permanent medical restriction which precluded him from significant amounts of standing, one of the essential functions of his prior account service representative position.

Upon his medical release, as of April 13, 2008 he returned to the employer, but the employer determined it could not return him to his prior position. He was placed into the position of delivery coordinator at the rate of $11.50 per hour. The claimant was not happy but accepted this turn of circumstance, working in the new position through June 16.

The claimant had prior personality issues with the store manager. On June 16, the store manager was chastising the claimant for some work issues. The discussion became somewhat

heated, and the claimant determined that given the problems he was having with the store manager on top of the reduction in his wages which he had been compelled to accept, he no longer wished to remain employed by the employer. He announced his decision to the store manager and left.

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). In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa court ruled that a 25 percent to 35 percent reduction in wage was, as a matter of law, a substantial change in the contract of hire. The Court in Dehmel cited cases from other jurisdictions that had held wage reductions ranging from 15 percent to 26 percent were substantial. Id. at 703. Based on the reasoning in Dehmel, a 24 percent change in the claimant's pay is substantial for purposes of unemployment insurance benefits. (The difference between $15.15 an hour and $11.50 an hour is about 24 percent.)

"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 not returning the claimant to his same or a comparable position, the change in the claimant's job duties and pay which had been implemented was a substantial change in the claimant's contract of hire. Dehmel, supra. Even though the claimant had initially accepted his reduced pay and position, only two months had passed since the change was implemented, not sufficient for the claimant to be deemed to have waived any objection. Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa App. 1990). Although the claimant had other reasons for quitting, it is only necessary that one of his reasons was for a good cause attributable to the employer. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). Benefits are allowed.

DECISION:

The representative's July 23, 2008 decision (reference 01) is affirmed. 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

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Decision Dated and Mailed

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