IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CLYDE E SQUIRES Claimant **DARRYL R BANOWETZ** Employer	**APPEAL 18A-UI-07148-SC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/10/18** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Clyde E. Squires (claimant) filed an appeal from the June 29, 2018, reference 02, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with Darryl R. Banowetz (employer) by refusing to continue working, which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on July 20, 2018. The claimant participated and was represented by John Graupmann. The employer participated through Co-Owner Darryl Banowetz, Co-Owner Donna Banowetz, and Farm Laborer/Milker Aubreigh Machande.

The Claimant's Exhibit A and the Employer's Exhibit 1 were admitted into the record without objection. The claimant offered a milking schedule into the record; however, the document had not been received by the administrative law judge at the time of the hearing and had not been sent to the employer. The document was not admitted into the record. It was later delivered to the administrative law judge and placed in the file, but was not considered in making this decision.

ISSUE:

Did the claimant voluntarily quit the employment with 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 Milker beginning on December 12, 2017, and was separated from employment on May 8, 2018, when he quit. When the claimant was hired, he was told he would work 40 to 50 hours per week. Between February 1 and April 30, the claimant averaged 56 hours per week or 112 hours per pay period. (Exhibit A, Exhibit 1) In the claimant's highest pay period, March 16 through March 31, he worked 132.96 hours and in his lowest pay period, April 16 through April 31, he worked 95.84 hours.

The week of May 1, the claimant was only scheduled to work 33 hours and only worked 41. He told Co-Owner Darryl Banowetz that he needed more hours or he was going to quit. Banowetz

told the claimant that he had told other employees he was too tired to work. The claimant had gone so far as to offer another employee $20.00 to milk all the cows in the pen by herself so he could take a nap during a double shift he was working. She declined his offer and he performed his job as required. The claimant told Banowetz he was not too tired to work and reiterated that he needed more hours. The schedule for the following week was posted and the claimant was only scheduled to work 36 hours. (Claimant's Testimony)

The claimant was working on May 8 with Alejandra and Louis. Alejandra accused the claimant of not paying attention to what she was showing him. The claimant argued back stating he was standing there watching her. He then left to perform other duties. Ten minutes later, Louis accused the claimant of not paying attention. The claimant told them he was not getting enough hours to deal with their behavior and walked out.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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. 871-24.25 provides, in relevant part:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (6) The claimant left as a result of an inability to work with other employees.
>
> …
>
> (27) The claimant left rather than perform the assigned work as instructed.

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). When a claimant provides multiple reasons for leaving his or her employment, each reason must be analyzed to determine if the reasons combined gave the claimant good cause attributable to the employer for leaving his or her employment. *Taylor v. Iowa Dept. of Job Serv.*, 362 N.W.2d 534, 540-41 (Iowa 1985). The claimant's inability to work with other employees and his refusal to continue working do not constitute good cause reasons attributable to the employer and, if those were his only reasons for leaving, benefits would be denied. However, the claimant also left due to a reduction in his hours which must be analyzed.

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). In this case, the claimant was averaging 56 hours a week and his hours were reduced by 27 percent the week of May 1 and 36 percent the week of May 7. The employer's reasons for reducing his hours are not temporary in nature as his hours were reduced because the employer believed him incapable of performing, or unwilling to perform, his job duties based on statements he made to other employees. The claimant experienced a change in the contract of hire when his hours were reduced.

The final issue is whether the employer reduced his hours due to disqualifying misconduct.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
>
> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer

made a correct decision in separating the claimant or reducing his hours, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The claimant did not receive any warnings nor was he given a chance to improve his conduct before his hours were reduced.

As the claimant received an indefinite 27 to 36 percent reduction in his 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 June 29, 2018, reference 02, unemployment insurance decision is reversed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

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Stephanie R. Callahan
Administrative Law Judge

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Decision Dated and Mailed

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