

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK R HOVEY
Claimant

O'REILLY AUTOMOTIVE INC
Employer

APPEAL 19A-UI-07163-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/11/19
Claimant: Appellant (2)

871 IAC 24.26(1) – Voluntary Leaving – Change in Contract of Hire

STATEMENT OF THE CASE:

Mark Hovey (claimant) appealed a representative's September 3, 2019 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with O'Reilly Automotive (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 2, 2019. The claimant participated personally. The employer participated by Codey Koch, Store Manager, and Jan Nicholas, District Manager. The claimant offered and Exhibits A and B were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 19, 2013, and at the end of his employment he was working as a full-time retail service specialist. The claimant regularly worked forty or more hours per week. If he worked more than thirty hours per week, on average, he received medical, vacation, and sick day benefits.

The claimant was the only full-time employee in his store. There were five part-time employees. At the end of July 2019, the claimant's store received a new store manager. The new store manager transferred a part-time employee from another store to the claimant's store. After transferring the new employee, the store manager realized the store had a problem with spending too much on payroll. The store manager received an e-mail from his district manager about maintaining a certain payroll percentage.

In response to the email, on Friday, August 9, 2019, at 8:30 a.m., the store manager informed the claimant that he would be working thirty hours per week from that point on. The claimant told the store manager that this was a hardship and he could not live on those hours. The claimant said he would have to find another job. The manager told the claimant that the change was due to budgetary concerns and there was nothing the manager could do about it.

The claimant tried repeatedly to contact his district manager. The two eventually talked on the telephone on August 9, 2019. The district manager understood that the store manager was cutting every employee's hours to thirty hours or less per week. The claimant told the district manager he could not live on the wages from the reduced hours. The district manager told the

claimant there was nothing he could do about this. He offered to talk more with the claimant in the weeks ahead. The district manager discussed the option of transferring the claimant to an unknown location if the opportunity were available in the future. The district manager did not indicate whether a transfer would provide more than thirty hours per week.

At about 2:30 p.m., on August 9, 2019, the claimant submitted his resignation to his store manager. His resignation was effectively immediately. His resignation letter indicated he was resigning because the employer reduced his hours by 25 percent.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

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.

A 25 percent to 35 percent reduction in working hours is, as a matter of law, a substantial change in the contract of hire. A substantial pay reduction creates good cause attributable to the employer for a resignation. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). The claimant quit work because the employer changed the hours he worked by at least 25 percent. This change is considered substantial change in one's contract for hire. The employer substantially changed the claimant's contract for hire and, therefore, the separation was not voluntary. The claimant is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

DECISION:

The representative's September 3, 2019, decision (reference 01) is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs