IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JOHN CHRISTENSEN Claimant **TRI CITY ELECTRIC CO OF IOWA** Employer	**APPEAL 21A-UI-24535-SN-T** **AMENDMENT** **ADMINISTRATIVE LAW JUDGE** **DECISION** **OC: 12/06/20** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 25, 2021, (reference 02) 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 January 4, 2021. The hearing was held jointly with appeal 21A-UI-24539-SN-T and 21A-UI-24537-SN-T. Claimant participated and testified. Employer participated through Safety Coordinator Nicole Leyendecker. Exhibit D-1 and Exhibit D-2 were received into the record. Official notice was taken of the agency records.

ISSUES:

Whether the claimant's appeal is untimely? Whether there are reasonable grounds to consider the claimant's appeal otherwise timely?

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 an installer from July 7, 2020, until he was separated from employment on August 17, 2020, when he quit. His immediate supervisor was Foreman Jack Daily. At the time of his hire, the claimant was told he would be working five ten-hour days during the week, with the option of working eight hours on Saturday.

On August 17, 2021, the claimant submitted his resignation by text message to Divisional Manager Joe Atkinson. The claimant resigned because he had been told earlier that day that the shift on Saturday would no longer be optional for an indeterminate amount of time. Mr. Atkinson informed the claimant that he did not have any openings for positions that did not have mandatory Saturday shifts. The claimant explained that he visits his children on the weekends and the mandatory hours on Saturday would leave little time left for those visitations.

The following section describes the findings of facts necessary to resolve the timeliness issue:

A disqualification decision was mailed to claimant's last known address of record on March 25, 2021. The claimant did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 4, 2021. (Exhibit D-1) The appeal was not filed until November 2, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

The claimant explained he believed he was eligible for benefits because he received a miscellaneous decision dated March 30, 2021, reference 08. In pertinent part, this decision said a previous decision was entered in "error and is null and void." The decision listed the employer's name and said he was allowed benefits. The claimant continued to have this misconception until he received two overpayment decisions dated October 25, 2021, reference 04 and 05.

REASONING AND CONCLUSIONS OF LAW:
The administrative law judge finds the claimant's appeal has reasonable grounds to be considered otherwise timely.

Iowa Code section 96.6(2) provides:

> 2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant was confused by the decision dated March 30, 2021, reference 08, which appeared to invalidate the decision disqualifying him for benefits. The claimant reasonably held this misconception until he received the overpayment decisions on October 25, 2021. The

claimant timely appealed the overpayment decisions, which was the first notice that he had been laboring under a misconception. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits:
>
> 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:

> 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:
>
> (23) The claimant left voluntarily due to family responsibilities or serious family needs.

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). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Change in the 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. *See Dehmel v. EAB*, 433 N.W.2d 700 (Iowa 1988); *Taylor v. Iowa Dept. of Job Service*, 362 N.W.2d 534 (1985). See also Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676 (1986) (finding the claimant's decision to quit instead of relocating to Texas for two months was not substantial when he was hired with the understanding his job site would move.) 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).

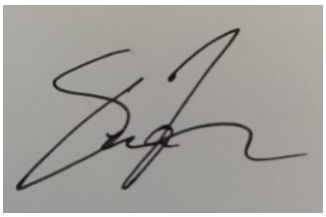
The administrative law judge is not aware of case law evaluating the notion that increasing the number of hours can result in a substantial contract of hire which results in the voluntary resignation being attributable to the employer. The rule itself lends itself to an increase in hours being a substantial change in the contract of hire, but the claimant has not made such a showing here.

The administrative law judge makes this determination based on an extrapolation from *Dehmel v. EAB*, 433 N.W.2d 700 (Iowa 1988). There the rationale was that a 25% reduction could lead to a substantial change in the contract of hire. Here, the employer's change increased the claimant's working hours by 16%, which is substantially less of a difference. Furthermore, common sense suggests that an increase would likely have to be more than is required for a reduction, to be substantial given that the claimant is not experiencing a loss in pay, but an increase in pay.

While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The March 25, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Sean M. Nelson
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February 3rd,2022
Decision Dated and Mailed

smn/rs