

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS A BETHKE
Claimant

APPEAL NO. 12A-UI-03433-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARTY PRODUCTIONS INC
Employer

OC: 02/19/12
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 28, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on April 19, 2012. Claimant participated with subpoenaed witnesses Mary Peterson, current store manager for Party Party (the employer's other store) and Carrie Clausen, accounting/marketing/ sales/payroll clerk. Employer participated through Dan Garst, owner.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a manager/sales representative and was separated from employment on February 17, 2012, when he quit. When hired, he was paid an hourly rate plus commission and then switched to and increased hourly wage without commission in the summer of 2011 without notice. When confronted, Garst said only that he thought that was what claimant would want and he had been given a raise. The parties dispute whether or not the raise compensated for the commission loss. On February 2, 2012, Peterson called claimant in his capacity as manager and asked why her salary and hours were being changed without notice. Claimant asked Garst and he did not respond. He asked Clausen about the payroll issue and was told if payroll for that store exceeded a certain amount, then the difference came out of her pay. He did not want to represent an employer who changed employee pay without notice and taking advantage of employees with respect to wages and vacation pay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code § 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.

871 IAC 24.26(3) and (4) 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:

(3) The claimant left due to unlawful working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

A notice of an intent to quit had been required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The claimant's concerns about his potential responsibility for the employer's changes without notice to wages, commissions, and vacation pay and offsetting of wages and hours to compensate for personnel costs created an intolerable work environment for claimant that gave rise to a good-cause reason for leaving the employment. Benefits are allowed.

DECISION:

The March 28, 2012 (reference 01) decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible, and the benefits withheld shall be paid.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw