IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MORGAN ZIMBELMAN Claimant **T.L. BAKER & CO. LLP** Employer	**APPEAL 24A-UI-03014-SN-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/25/24** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Morgan Zimbelman, filed an appeal from the March 13, 2024, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary resignation.

The parties were properly notified about the hearing. A telephone hearing was held on April 9, 2024, at 10:00 a.m. The claimant participated and testified. The claimant was represented by Marlon E. Mormann, attorney-at-law. The employer participated through Lindsey Starret, a partner. The employer was represented by attorney-at-law, Anna E. Mallen. Exhibits B, C, D, and E were received into the record. Exhibit A was not admitted because of an objection as to its authentication. The employer's proposed exhibits were not received into the record because they were not sent to the Appeals Bureau until the day of the hearing and did not comply with Iowa Admin. Code r. 871-26.15.

ISSUE:

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 as a tax manager from July 15, 2013, until she was separated from employment on February 19, 2024, when she quit. Until her final contract term, the claimant worked full-time.

The employer requires all employees to sign new contracts each year. It does this for several reasons, but most importantly because the employees must agree to confidentiality to comply with federal tax privacy requirements. The employer also does this to renew a non-compete agreement clause it uses to preserve its client base. Despite this requirement, the employer has not always been prompt in presenting these contracts to employees. In 2016, the claimant was not presented with an employment contract. However, the claimant was presented with a contract each succeeding year.

The claimant agreed to the 2022 contract. In that contract it had a non-compete provision in paragraph six sub section “c” in which the claimant agreed that she would not perform her services for another employer or herself for two years after the expiration of the employment agreement within 30 miles of Grinnell, Iowa. The claimant provided a copy of this contract. (Exhibit D)

In 2023, the claimant and her husband began construction on a new home. The claimant also has firmly established herself in the community and it would be difficult to change communities moving forward.

As a reward for working for the employer for ten years, the employer offered in 2023 to reimburse the claimant up to $4,000 if she took a vacation. This was not in any policy or any contract. The claimant did not take a vacation in 2023 to be reimbursed. The claimant provided a card that shows the claimant was offered this. (Exhibit E)

In early-January 2024, Ms. Starret dropped off the contract effective October 23, 2023 to all employees as was her typical practice. The claimant wanted to drop down to 24 hours per week on this contract. The claimant’s salary was pro-rated to pay her consistent with her existing salary, but with fewer hours per week. With that in mind, Ms. Starret did not give the claimant a raise on the new contract. The 30-mile non-compete provision remained in the contract. The claimant provided a copy of this contract. (Exhibit B)

As was her practice, the claimant did not sign the contract right away. Ms. Starret began to press the claimant to sign the contract. Ultimately, the two spoke about it on February 15, 2024. In that conversation, the claimant stated that she would not sign the contract because of the 30-mile non-compete provision.

On February 16, 2024, Ms. Starret sent a text message to the claimant stating that it was her understanding that she was unwilling to sign the contract and that this constituted her resignation. Ms. Starret said she hoped that she could get a letter of resignation from the claimant, but she added that she wanted everyone to be on the same page. The claimant replied that she did not feel like it was in her best interest to sign the contract, but she added that she felt like she was still able to perform her duties. The claimant provided these text messages. (Exhibit C)

On February 19, 2024, the claimant was separated from payroll with the rational that she had quit.

REASONING AND CONCLUSIONS OF LAW:

I conclude the claimant’s separation from employment on February 19, 2024 was without good cause attributable to the employer.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.*. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether

the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*.

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

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).

As an initial matter, I find the claimant quit rather than being terminated. In this case, the claimant's refusal to sign the contract after the employer's ultimatum that it was necessary to continue her employment constitutes an overt act which severed the employment relationship. I do not find it persuasive that the claimant worked outside of a contract certain years because ultimately since 2017 it was part of her employment that she would have to renew these contracts.

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:
>
> (13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

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).

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. EAB*, 433 N.W.2d 700 (Iowa 1988). In this case, the claimant gave essentially three reasons for quitting and none of them meets the standard for a substantial change in her contract of hire.

Primarily, the claimant asserted that she refused to sign the new contract because of the 30-mile non-compete provision. A restrictive non-compete agreement could be the basis for a substantial change in the contract of hire, except in this case, the claimant had already served an entire contract term in 2022 with it in place. When an employee continues to work under what will later be an asserted unacceptable provision, such a provision is deemed to have been accepted by the employee and cannot constitute a substantial change. *See generally Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 681 (Iowa 1986).

Secondarily, the claimant also offered that she was not given the $4,000 travel reimbursement promised to her. I find this to be inapplicable for a variety of reasons. She did not dispute that she needed to take the trip to be later reimbursed to enjoy this benefit. She did not dispute that she never took this trip. But more importantly, this was not part of her contract and cannot constitute a substantial change of the same. Even if it could be considered as part of her contract, this is not substantial as a matter of law. Finally, there is nothing in the record to suggest that she would not have been able to enjoy this in the following year after signing a new contract. *See Dehmel v. EAB*, 433 N.W.2d 700 (Iowa 1988).

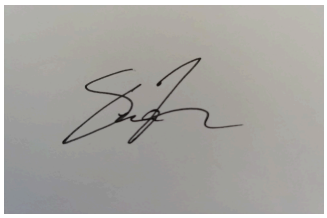
In passing the claimant said that the employer's decision to not give her a raise was also a reason. Even if this could be combined with the loss of the trip reimbursement, it would not reach the threshold expressed as substantial given in *Dehmel v. EAB*, 433 N.W.2d 700 (Iowa 1988).

Ultimately, I find the claimant's reason for quitting was that she was no longer willing to accept contract provisions she had previously accepted because she was building a new home and had more established connections in Grinnell, Iowa. While this does not nearly fit one of the presumptive reasons for disqualification, I find it analogous to Iowa Admin. Code r. 871-24.25(13) which asserts that when a claimant quits due to insufficient wages they agreed to, then they are disqualified from benefits.

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 13, 2024, (reference 01) unemployment insurance decision is AFFIRMED. The claimant voluntarily left her employment on February 19, 2024 without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

April 12, 2024
Decision Dated and Mailed

smn/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:
1) The name, address, and social security number of the claimant.
2) A reference to the decision from which the appeal is taken.
3) That an appeal from such decision is being made and such appeal is signed.
4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at https://www.legis.iowa.gov/docs/code/17A.19.pdf or by contacting the District Court Clerk of Court https:///www.iowacourts.gov/iowa-courts/court-directory/.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:
A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:
1) El nombre, dirección y número de seguro social del reclamante.
2) Una referencia a la decisión de la que se toma la apelación.
3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en https://www.legis.iowa.gov/docs/code/17A.19.pdf o comunicándose con el Tribunal de Distrito Secretario del tribunal https:///www.iowacourts.gov/iowa-courts/court-directory/.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:
Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.