

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONNA M RIESBERG
Claimant

3-A ENTERPRISES INC
Employer

APPEAL 17A-UI-02444-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/29/17
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Change in Contract of Hire
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the February 22, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged from work and there was no evidence of willful or deliberate misconduct. The parties were properly notified of the hearing. A telephone hearing was held on March 28, 2017. The claimant, Donna M. Riesberg, participated. The employer, 3-A Enterprises, Inc., participated through Paul Anderson, Manager; and Norm Anderson, Owner.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as an office manager, from February 2007 until January 31, 2017, when she quit after being informed that her wages were being reduced. For several years immediately prior to claimant's end of employment, she earned an annual salary of \$45,500. Claimant testified that she worked, on average, 25 hours per week, as she was busy during the spring and fall months and worked reduced hours in the summer and winter months. On January 17, Paul Anderson came to claimant and told her that she would need to become an hourly employee at an hourly rate of \$17.00. Claimant refused to accept this new compensation rate, and she left her employment rather than accept the reduced pay rate.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3337.00, since filing a claim with an effective date of January 29, 2017, until the week ending March 25, 2017. The administrative record also establishes that the employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but her separation was with good cause attributable to her employer. Benefits are allowed.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Here, the evidence shows that claimant was the person who decided to sever the employment relationship. Therefore, this case will be analyzed as a quit and not a discharge.

Iowa Code § 96.5(1) provides:

Causes for disqualification.

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. 871-24.26(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:

24.26(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.

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).

Here, claimant was informed that the employer intended to move her from salaried compensation to hourly compensation. The hourly rate that the employer proposed was approximately 50% of the rate claimant earned as a salaried employee (relying on claimant's testimony that she worked, on average, 25 hours per week). This reduction in pay is a substantial change in her contract of hire, as she had always been a salaried employee, she worked for the past several years at her current salary, and the employer did not indicate it was eliminating any of claimant's job responsibilities to comport with her reduced compensation. Claimant's decision to end her employment was with good cause attributable to her employer. Benefits are allowed. As claimant's separation is qualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The February 22, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed