

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CARRIE E SHEPHERD
Claimant

DOLGENCORP LLC
Employer

APPEAL 19A-UI-02311-DG-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/24/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 13, 2019, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 2, 2019. Claimant participated. Employer participated by DJ Draves, District Manager. Claimant's Exhibits A-B were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 31, 2019. Claimant resigned on that date because she did not receive an increase in pay that she believed she deserved.

Claimant began working for employer on December 30, 2016 as a store associate. In January, 2018 claimant was asked to take on more duties and work while the store manager was ill. Claimant agreed to accept the extra work. In February, 2018 claimant was told by the district manager that she would be receiving a dollar an hour raise. Claimant did not receive a raise in her pay in March, and April, 2018. She sent texts and e-mails reminding her manager about the raise in May, 2018. Claimant never received a raise.

In July, 2018 claimant was officially promoted to the store manager position. Claimant was offered \$42,700.00 a year. Claimant requested a higher starting salary to make up for the pay raise she did not receive while she filled in for the store manager. The district manager told claimant he would consider her request, and that he would discuss her salary with the corporate office. In November, 2018 claimant was told that she would not be receiving the salary increase she requested. Claimant was told that she should be content with the position and salary she was receiving.

In January, 2019 claimant continued to be unhappy with what she believed was a lack of gratitude and respect from the employer when they denied her salary increase. Claimant heard that a manager in another store had been offered a higher beginning salary than her, and she did not believe she was being treated fairly. Claimant decided that she would resign from her position because the employer would not agree to increase her salary. Claimant gave a three week notice, and she left the employment on January 31, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

(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). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 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 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). A refusal to accept a night shift position at a sanitarium constitutes a good cause quit attributable to the employer when that shift would endanger the claimant's health. *Forrest Park Sanitarium v. Miller*, 333 Iowa 1341, 11 N.W.2d 582 (Iowa 1943).

Employer did change claimant's job duties, and claimant worked extra hours without receiving additional pay in the spring of 2018. The employer gave claimant its final decision about her salary increase in November, 2018. She continued to work for at least two months after being

notified of that decision without specific complaint to the employer, thus acquiescing to the changes. Employer reasonably believed the matter was settled, and it continued offering claimant wages and benefits as the store manager. Benefits are denied.

DECISION:

The March 13, 2019, (reference 01) decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn