

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BENTON L DAVIS
Claimant

DAVIS HOMES LLC
Employer

APPEAL 19A-UI-00104-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/09/18
Claimant: Respondent (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:

Employer filed an appeal from a decision of a representative dated January 2, 2019, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 22, 2019. Claimant participated. Employer participated by Sidney Davis, Owner. Employer's Exhibits 1-9 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 November 27, 2018. Claimant resigned on that date effective immediately because of a change to his contract of hire.

Claimant began working for employer on February 8, 2017 as a sales consultant. At the time of hire claimant was told that he would make \$13.00 an hour and he would receive 1.5% commission on all sales. Claimant was the only sales consultant for the business.

On or about September 5, 2018 claimant was notified that changes needed to be made to his commission. Claimant did not understand why the changes were made, and he wasn't sure exactly how his commissions might be effected by the pending changes. Claimant explained to employer that as the only salesman when one of the owners made a sale they were competing against him unless he continued making 1.5% on all sales.

On November 27, 2018 claimant received his paycheck and he noticed that his commissions on sales had decreased dramatically. Claimant was no longer receiving sales initiated or closed by the owner or his wife, and he had received 50% of his normal commission from other sales. Claimant decided that he must resign from the employment effective immediately on that date because his pay had been decreased by approximately 50%. Claimant had not received any

written warnings for misconduct, and he did not understand why employer had decided to make changes to his contract of hire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with 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).

Since there was no disqualifying basis for the demotion, the quit because of the change in contract of hire was with good cause attributable to the employer. Inasmuch as the claimant would suffer a substantial decrease in pay, and employer has not established misconduct as a reason for the effective demotion, the change of the original terms of hire is considered substantial. Thus, the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The January 2, 2019, (reference 01) decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn