

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DENIS TELBIZ

Claimant

APPEAL 18A-UI-09341-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOMEMAKERS PLAZA INC

Employer

OC: 08/05/18

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 August 29, 2018, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 26, 2018. Claimant participated. Employer participated by Jamie Smith, Human Resources Manager.

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 August 2, 2018. Claimant resigned from the employment on that date because his hours were changed, and he was not able to accommodate employer's change in his contract of hire.

Claimant began working for employer on January 8, 2018 as a full-time pickup worker. Claimant's hours were set at 9:50 a.m. to 6:00 p.m. Monday through Friday with some weekend hours. Claimant has two young children in his home, and his wife was looking for work when he was hired. Claimant's wife later found employment and she began working evening hours sometime in late March of 2018. Claimant was having difficulty getting home in time, and he was contemplating quitting from the employment in late March of 2018. Claimant told his manager the issues he was having and his manager allowed him to skip lunch, and then go home 30 minutes early. Claimant and his spouse were able to have an adult in the home at all times with their children with claimant's original work schedule.

In June of 2018, claimant was injured at work. Claimant sought treatment, and employer accommodated his work restrictions. Claimant was able to continue working performing light duty tasks. In late July, 2018m claimant's restrictions were lifted as long as he was able to take breaks to rest his injured foot. During this time employer was trying to find suitable work for claimant.

On August 2, 2018, claimant was notified that he would be working back in the warehouse doing the work he had been doing when he was hired, but his hours would be changed to 2:00 p.m. to 9:00 p.m. Claimant told the human resources manager and his supervisor that evening hours were not possible because he had responsibilities caring for his young children while his wife worked in the evening. Claimant was told that there was no other work available for him, and that beginning effective immediately he would be working until 9:00 p.m. each day. Claimant considered his options and decided he had to resign from his employment at that time.

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).

Employer's decision to change claimant's hours was made as a business reorganization decision. Claimant had told his supervisor and the human resources department that he had

young children in the home that needed his care during evening hours. Claimant's employment had become intolerable because he could not work evening hours. The change in claimant's hours is considered a substantial change in contract of hire and the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The August 29, 2018, (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