IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ROBERTA A BURGESS Claimant **FAMILY DOLLAR SERVICES INC** Employer	**APPEAL 15A-UI-11318-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/20/15** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 7, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 26, 2015. Claimant participated. Michael Burgess testified on behalf of claimant. Employer participated through human resources generalist, Kristen Regenwether.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge 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 as a general warehouse worker from October 11, 2004, and was separated from employment on July 8, 2015, when she quit.

On August 21, 2014, claimant was placed on Family and Medical Leave Act (FMLA) leave. Claimant was working first shift (7:00 a.m. to 3:30 p.m.) when she was placed on Family and Medical Leave Act (FMLA) leave. Claimant was initially given 12 weeks under Family and Medical Leave Act (FMLA) leave. The employer then granted claimant an additional nine weeks. The employer uses a third party to manage its Family and Medical Leave Act (FMLA) leave. According to the third party, claimant exhausted her leave and was to return on January 1, 2015. On January 1, 2015, claimant was considered to be on non-FMLA leave. The employer did not have a discussion with claimant regarding her continued employment when she did not return to work on January 1, 2015. Claimant would check in on occasion with the employer and state she was not available to return to work. On July 8, 2015, claimant called the employer and reported that she had been released to full duty. The employer did not guarantee claimant's position after her FMLA had been exhausted. On July 8, 2015, the employer offered claimant a position on second shift (starts at 5:00 p.m.), which had different hours and a little

higher pay. The position was in the same department, but had different job duties; repack order filler was the new position. Claimant refused the second shift position because she needed to be available during second shift to take care of her son. When claimant refused the position, she was officially separated from employment. The employer told claimant that she could keep her application updated with the employer if something was to open up on first shift.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer.

Iowa Code § 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. 871-24.26(1) and (23) 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.
>
> (23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

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 recently 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).

Although claimant was not required by law to give the employer notice of her intent to quit, the change to the terms of hire must be substantial in order to allow benefits. In this case, claimant was aware of the impending schedule change when she quit and she has established that the

change would be substantial. On August 21, 2014, claimant went on Family and Medical Leave Act (FMLA) leave. The employer was aware of the reason she was on leave. When claimant went on leave, she was working first shift. Although claimant's Family and Medical Leave Act (FMLA) leave and her medical leave of absence may have ended in January 2015, the employer took no action when claimant did not return to work. Claimant would periodically check in with the employer about her medical condition. On July 8, 2015, claimant initiated a conversation with the employer to let them know shew was released back to full duty. Instead of placing claimant back into her position on first shift, the employer offered her a position on second shift. Even though the pay was going to be a little more because of the shift bonus, the hours were going to be substantially different. Claimant refused the second shift offer because of her family needs. Claimant needed to continue to work on first shift. When claimant refused to accept the second shift position when there was no open first shift position, she effectively quit her employment. However, claimant quit immediately upon learning the employer was going to substantially change her hours. Claimant did not acquiesce to the change in shift. There was no disqualifying misconduct basis for the change in shift, but it was made as a business decision, and while there was no corresponding reduction in pay or hours as a result of the demotion, it did result in a significant change of her start and end time. Claimant has met the burden of proof to show she quit with good cause attributable to the employer. Her change from first shift to second shift is considered a substantial change in contract of hire and the separation was with good cause attributable to the employer. While the employer is certainly entitled to make personnel decisions based upon its needs, those needs do not necessarily relieve it from potential liability for unemployment insurance benefit payments. Since claimant's shift was significant changed, which affected claimant's family situation because of a business decision, the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The October 7, 2015, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs