IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

LISA L ANDERSON Claimant **HY-VEE INC** Employer	**APPEAL 20R-UI-09296-DG-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/05/20** **Claimant: Appellant (2)**

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 May 18, 2020, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 16, 2020. Claimant participated. Employer failed to respond to the hearing notice and did not participate.

A decision was issued by the administrative law judge in this matter on June 29, 2020. The employer appealed that decision to the Employment Appeal Board. The Employment Appeal Board issued a decision on August 3, 2020, which remanded this matter back to the appeals bureau for another hearing.

After due notice, another hearing was scheduled for September 23, 2020. Claimant did not participate. The employer participated through Shauna Abrams, Human Resources Manager. The administrative law judge took official notice of the administrative record.

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 March 7, 2020. Claimant left the employment on that date because her hours had been significantly reduced.

Claimant began working for employer as a full-time night stocker on October 10, 2018. Claimant was hired to work 4 nights a week at the time of hire. Those hours and wages were offered to her through February, 2020.

In late February, 2020 claimant was ill and she missed work for a week. Claimant followed employer's attendance policy and reported her absences. She was not issued any written warnings for the days she missed work.

On or about March 7, 2020 claimant was notified that her hours were being reduced from Four nights a week to One night a week. Claimant told her manager that she could not survive on those wages. Claimant was told that the changes made to her hours were final. Claimant became very angry and she called her manager a “fucking asshole”.

Claimant decided that she had to quit and look for full-time work on March 7, 2020. Claimant could not support herself on the wages that were being offered by employer. Claimant went in and met with Ms. Abrams on or about March 8, 2020. Claimant further explained that she could no longer work for employer to Ms. Abrams at that meeting. Ms. Abrams told claimant that she violated employer’s unbecoming conduct policy, and that she would be fired for misconduct.

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).

The claimant had decided that she had to leave the employment on March 7, 2020. Claimant informed her manager that she could no longer work at Hy-Vee because her hours had been substantially reduced. Claimant did manifest her intent to quit to employer on that date.

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 75% decrease in hours and wages, 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 May 18, 2020, (reference 01) decision is reversed. 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

September 28, 2020
Decision Dated and Mailed

dlg/sam