

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JANICE K JUNGLING
Claimant

APPEAL NO. 10A-UI-15626-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

OC: 08-29-10
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(1) – Voluntary Leaving - Change in Contract of Hire

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 3, 2010, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on January 4, 2011. The claimant did participate. The employer did participate through Nick Miller, Store Leader. Employer's Exhibit One was entered and received into the record.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cook, part-time, beginning in August 2008 through August 29, 2010, when she voluntarily quit. When the claimant was hired, she was working three days per week for seven hours each day, or 21 hours per week. She had a non-work-related car accident on May 18 and asked for a leave of absence to recover. Her request was granted. When she returned to work, she was working at her request only five hours per day for two shifts per week in a continued effort to recover from the automobile accident. She took another leave that was approved by the employer and when she returned to work, she was told she would only be given one shift of seven hours per week in the kitchen. The claimant had never been scheduled to work up front at the cash register, just in the kitchen. The employer told her that if she wanted additional hours, she would be required to work up front as a cashier. The claimant quit due to the reduction of her hours and the change in job duties, as she was going to be assigned from cook to cashier. The claimant never qualified for Family Medical Leave Act (FMLA) benefits, because she did not work enough hours in the year.

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 § 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.

871 IAC 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. EAB*, 433 N.W.2d 700 (Iowa 1988). Inasmuch as the claimant would suffer a substantial loss of hours or change in job duties, 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 November 3, 2010 (reference 02) decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw