IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-04888-SWT
OC 03/28/04 R 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 3, 2003, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on May 24, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Barry Nadler participated in the hearing on behalf of the employer with a witness, Jody Hardison.

FINDINGS OF FACT:

The claimant worked for the employer from March 3, 2003 to March 31, 2004. The claimant was hired as an administrative assistant with at a salary of $25,900.00 per year ($12.45 per hours based on 40-hour week). When the claimant was hired, she informed the president of the business, Barry Nadler, that she was involved in rodeo events and needed five to ten Fridays off work per year to participate in the events. Nadler told the claimant that it was fine

but that she would be expected to make up the hours missed. With this flexibility, the claimant accepted the job. Afterward, the claimant began to take some time off on Fridays and sought and received approval for the time that she missed. The claimant made up the hours that she was absent.

In January 2004, the claimant's job changed to customer service representative. Nadler changed her job duties because he felt the customer service position fit the claimant's personality and skills better. The claimant accepted the change, which did not involve any change in her compensation or hours.

On March 10, 2004 the office manager, Jody Hardison, informed the claimant that she was being changed to an hourly employee at a rate of pay of $11.99 per hour and would no longer have the flexibility to take time off for rodeo events, and if she took time off, she would have to use vacation to cover it. This was done because the employer believed the claimant was abusing the flexible schedule and that she was not making up all the hours she was absent. The claimant did not take more time off than she represented when she was hired.

The claimant complained to Hardison that the change violated the terms of her hiring and that $11.99 was not the proper rate of pay. Hardison insisted that the pay had been determined by payroll and was correct, but that she would look into the matter. She told the claimant that if the claimant did not like the changes, she should find something else to do.

On March 18, 2004, the claimant spoke to Hardison again about the changes. Hardison said she did not have the chance to check with payroll about the rate of pay and again suggested that she should find another job if she was unhappy with the changes. Later that day, the claimant submitted a notice that she intended to quit work effective March 31, 2004, due to the change in her rate of pay and the loss of flexibility in her hours of work. The employer made no attempt to resolve the problems that the claimant identified as her reasons for quitting.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code Section 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.

The changes in the claimant's terms of employment were substantial. There is a substantial difference between being a salaried employee and an hourly employee in terms of an employer's ability to dock an employee's pay for taking time off. The employer substantially changed the terms of the hiring agreement by no longer allowing the claimant the flexibility of taking time off and making up that time. Finally, the claimant had the right to expect that an employer attempting to pay the claimant the equivalent of her yearly salary would be able to readily divide $25,900.00 by 2080 to determine her proper rate of pay was $12.45 per hour.

The Iowa Supreme Court in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993), established conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions or a substantial change in the contract of hire. First, the claimant must notify the employer of the unacceptable condition or change. Second, the claimant must notify the employer that she intends to quit if the condition or change is not corrected. The claimant has met these conditions by proving advance notice to the employer with the reasons for her leaving.

DECISION:

The unemployment insurance decision dated March 3, 2003, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/b