

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TALMADGE N KEOWN
Claimant

APPEAL NO. 09A-UI-17173-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 10-18-09
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, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 21, 2009. The claimant did participate and was represented by Andrew Stoltze, Attorney at Law. The employer did participate through Todd Welch, Telesales Manager I and was represented by Steve Zaks of Barnett Associates.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a customer service and sales associate full time beginning December 18, 2006 through October 15, 2009 when he voluntarily quit.

The employer determined that they wanted to move the claimant to another position for business needs. The claimant was an excellent salesperson and the employer believed he would be able to handle the new position. The claimant initially thought he might want the new position, but after learning of the customer base, (people who already had top tier services) and the reduced commission rate, the claimant determined he did not want to move positions. The claimant was not being moved for any disciplinary reason, merely for business needs of the company. The claimant determined based upon the representations made to him by Terry Hannam, that while his hourly rate would remain the same his commissions would decrease. The claimant estimated that his annual pay would drop from roughly forty-thousand dollars to twenty-five thousand dollars per year. Additionally, the claimant would face reduced seniority and a change in his hours of work.

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). The administrative law judge is persuaded that the claimant would suffer a reduction in pay as a result of the job change. At hearing Mr. Welch admitted that the claimant would lose at least two-thousand dollars due to the reduced commission rate alone. In addition it is hard to fathom the claimant making greater sales when he will be dealing primarily with customers who have already purchased most services. Under these circumstances the administrative law judge is persuaded that the forced job change represented a substantial change in the contract of hire and would have resulted in lowered wages for the claimant. His quitting for that reason was with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The November 3, 2009, reference 01, decision is affirmed. The claimant voluntarily left his 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/css