

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BETHANY M COCHRAN
Claimant

A GREAT LOVE COMPANY LLC
Employer

APPEAL 16A-UI-11357-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/12/16
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the October 10, 2016, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 3, 2016. The claimant participated personally. The employer participated through Heather Patterson, former vice president of human resources. Kathy Hogan and Kit Baloun and also testified for the employer. Claimant exhibit A and Employer exhibit 1 were received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a vice president of marketing and was separated from employment on September 12, 2016, when she resigned.

When the claimant began the employment, she was paid a salary of \$150,000 per year. Due to financial difficulties in the company, she and others were requested to take a pay cut or alternately, a 90-day furlough. The pay cut was 50% of the claimant's wages. The claimant had previously experienced delays in receiving her paychecks on time, as recently as May and June, before beginning furlough. Then while on furlough, the claimant was made aware through other employees that paychecks continued to be affected by the financial instability the

company was experiencing. The claimant also had a conversation with the owner a week prior to tendering her resignation, and he expressed concern about the finances. The claimant did not believe based on the conversation she would be brought at the same rate of pay. Mr. Moreland, the owner, to whom the claimant resigned and discussed the finances with, did not attend the hearing or provide a written statement for the hearing. Upon learning that she would have to offer notice in order to receive her unused PTO, the claimant tendered her resignation to Ms. Patterson and Mr. Moreland. Due to a lack of funds, the claimant was not paid her PTO for several weeks after separation.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,315.00, since separation from the employer. The administrative record also establishes that the employer did participate in the fact-finding interview by way of Heather Patterson and Kathy Hogan.

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:

Causes for disqualification.

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) 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 voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25. "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973). See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the

evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record establishes good cause that would have prompted a reasonable person to quit the employment.

While the employer is certainly entitled to make personnel decisions based upon its needs, that need does not necessarily relieve it from potential liability for unemployment insurance benefit payments. 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).

The claimant quit after a change in pay from her contract of hire. Iowa law requires a change to the terms of hire must be substantial in order to allow benefits. In this case, the claimant took a 90-day furlough and did not initially quit the employment when told her salary would be cut by 50%. This was after she had experienced delays in payment. Then, while on furlough, the claimant continued to hear of delayed paychecks and financial instability from employees and the owner himself. The administrative law judge is not persuaded that based on the evidence presented that the claimant could have returned at her rate of pay at the time of hire. Further, the administrative law judge is persuaded that the claimant's concerns and fears of continued financial stress were valid; this was further confirmed by the fact her PTO payments had to be delayed until the employer had adequate funds to pay her out. A 50% pay cut after a 90-day furlough is certainly a substantial change in the terms from hire. Thus the separation was with good cause attributable to the employer. Benefits are allowed.

Because the claimant is eligible to receive benefits, any issues of overpayment and relief of charges for the employer are moot.

DECISION:

The October 10, 2016, (reference 03) unemployment insurance decision is affirmed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The claimant has not been overpaid benefits. The employer's account is not relieved of charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs