

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK W BRITTAIN

Claimant

APPEAL NO: 15A-UI-01260-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TIMOTHY L SHORE
D/B/A CALVIN ROCKETT LLC
Employer

OC: 01/04/15

Claimant: Respondent (5)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Timothy L. Shore doing business as Calvin Rockett, L.L.C.i (employer)) appealed a representative's January 22, 2015 decision (reference 01) that concluded Patrick W. Brittain (claimant)) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 24, 2015. The claimant participated in the hearing. Allison Shore appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer in about June of 2011. He worked full time as an opening/lead cook in the employer's bar and grill. His last day of work was December 20, 2014.

The claimant had been hospitalized in November for an issue related to an ulcer. As a result of this he learned that he would need a surgery, but he would not be able to undergo the surgery until after completing alcohol rehabilitation. He advised the employer that he would be off work for several weeks for the rehabilitation. He indicated that he planned and would like to return to the employment when he was done. The employer indicated that it would discuss his return when he was done with the program. The claimant never indicated that he was quitting the

employment in order to undergo the program; he believed he was on an at least informal leave of absence. While the employer had issues with the claimant's reliability in reporting for work, he was never given a written warning or told he was discharged; the employer believed the claimant had quit by taking off work to undergo the treatment program.

The claimant ended up beginning the program on December 22, 2014, and completing it on January 4, 2015. He then immediately contacted the employer about returning to work. On January 5, 2015 the employer informed the claimant that it had hired a new opening/lead cook. The employer indicated that the claimant could be rehired in a lesser position, but would earn only \$9.00 per hour, rather than the \$10.50 he had been earning previously. The claimant declined due to the reduction in the pay and position.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. Rule 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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 from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant voluntarily quit on December 20, 2014. The claimant clearly did not have an intent to quit, but only to be off work on a leave of absence. The employer did not tell the claimant that he was discharged or that his intended time off work was denied. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit on December 20, 2014. Iowa Code §96.6-2. Rather, it was a de facto leave of absence from work.

The separation from employment then occurred on January 5, 2015 when the employer informed the claimant that he could return to work but at the lower pay and position, and the claimant left and effectively quit rather than accept the demotion. A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. Rule 871 IAC 24.26(1). A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988); *Raffety v. Iowa Employment Security Commission*,

76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for not returning the claimant to the same or a comparable position, the change in the claimant's job duties and pay which had been implemented was a substantial change in the claimant's contract of hire. *Dehmel*, supra. Benefits are allowed.

DECISION:

The representative's January 22, 2015 decision (reference 01) is affirmed as modified with no effect on the parties. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs

NOTE TO EMPLOYER:

To change the address of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.
Helpful information about using this site may be found at:
<http://www.iowaworkforce.org/ui/uiemployers.htm> and
http://www.youtube.com/watch?v=_mpCM8FGQoY