

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY G COX
Claimant

APPEAL NO: 10A-UI-16261-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRANSLATIONS UNLIMITED INC
Employer

OC: 09/19/10
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Translations Unlimited, Inc. (employer) appealed a representative's November 18, 2010 decision (reference 01) that concluded Amy G. Cox (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 convened on January 13, 2011, and reconvened and concluded on January 19, 2011. The claimant participated in the hearing. Martha Wells appeared on the employer's behalf with one other witness, Rossana Nelson. During the hearing, Employer's Exhibits One through Five were entered into evidence. 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?

FINDINGS OF FACT:

The claimant started working for the employer on or about May 15, 2008. She was originally considered full time working as an appointment coordinator. As of about May 2009 she was earning \$10.26 per hour for that work. She was also receiving some monthly pay (\$250.00) as an on-call manager. Separately she did receive some compensation from the employer on an independent contractor basis for work she did as an American Sign Language interpreter.

Agency records indicate that through the fourth quarter 2009 the claimant was averaging about 31 hours per week. This was the highest quarter in the claimant's eventually established unemployment insurance base period; Agency records indicate that her average weekly wage for that quarter was \$379.90. In February 2010, due to business needs as well as some concerns regarding the claimant's attendance, the employer reduced the claimant's employee hours. Agency records indicate that in the second quarter 2010 the claimant was averaging about 27 hours per week, although this included her monthly pay; her regular scheduled hours were only 22 hours per week. The claimant was not happy about the reduction in her hours, but did not have a choice as to whether to accept the reduction or not.

The claimant was on maternity leave from August 2 through September 30. The end date of the leave had not been established in advance, and on August 26 the claimant emailed the employer indicating that she would be ready to return and wished to return on September 20. However, the employer responded on September 17 indicating that it did not wish the claimant to return until October 1. The employer also advised the claimant that for the indefinite future her hours would be further reduced to 16 hours per week, and she would no longer receive the \$250.00 per month as the on-call manager. This would effectively reduce her weekly wage to \$164.16, less than half of what she had been earning less than a year before.

The claimant did return to work on October 1 and worked through October 4, during which time there were various discussions about the employer's decision to reduce her hours. Some of the employer's reasons related to conflicts between the claimant and the office manager, as well as concerns regarding the procedures used for assigning the interpreter jobs. The employer sought to assure the claimant that at least some of the difference might be made up by the claimant being available for and receiving more work from the employer as an independent contractor interpreter. However, after a specific meeting on the subject on October 7 in which the employer reinforced its decision regarding the claimant's hours, the claimant indicated that she could not continue to work for the employer. She confirmed that decision by an email response to the employer on October 11.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. 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, nor is it pertinent that the claimant remained an "at will" employee. 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, and in fact further reducing her position, those reasons are not relevant to determining whether the claimant had good cause for quitting because of the changes. While a delay in quitting because of a change the employment arrangement can result in a conclusion that the claimant has waived her objection, the initial reduction in her hours was not as substantial; further, the period of time the claimant was off work on leave would not be included in considering whether she had waived her right to object. Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa App. 1990). In this case, the overall change in the claimant's job and compensation which had been implemented between February and October 2010 resulted in a substantial change in the claimant's contract of hire. Dehmel, supra. Offering to replace wages lost in employment with compensation earned in independent employment does not mitigate this change for purposes of determining the effect on the employment arrangement. The claimant did have good cause for quitting the employment. Benefits are allowed.

DECISION:

The representative's November 18, 2010 decision (reference 01) is affirmed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs