

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN M PETERSON

Claimant

APPEAL NO. 13A-UI-11262-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRENTRESS FINANCIAL INC

Employer

OC: 09/08/13

Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated October 1, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on October 30, 2013, by telephone conference call. The claimant participated personally. The employer participated by Mark Frentress, Owner; Leah Johnson, Sales Associate; and Denise Parry, Sales Associate. The record consists of the testimony of Mark Frentress; the testimony of Leah Johnson; the testimony of Denise Parry; the testimony of Megan Peterson; claimant's Exhibits A and B; and Employer's Exhibits 1-8.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides financial services for its clients, including insurance, retirement planning and mutual funds. The claimant was hired on September 1, 2010, as a production assistant. Her responsibility was to bring business into the company. Initially she was paid on a salary plus commission. The employer anticipated that once the claimant had developed her book of business she would be paid on a commission basis only.

The claimant did not produce the business that was expected by the employer. For example, from January 1, 2013, through August 8, 2013, the claimant only sold five new property/casualty policies and one life insurance policy. On August 8, 2013, the claimant's contract of hire was changed. She would be paid on a commission basis only, and she would be responsible for office expenses in Alta, which is where the employer had a satellite office and where the claimant worked. The claimant resigned her position because she did not agree with the changes to the contract, specifically the elimination of her salary.

The claimant resigned her position via email on August 26, 2013. She informed the employer that she would work through August 30, 2013. The claimant had a job with another insurance company. The employer did not feel comfortable with this arrangement and accepted her resignation as of August 26, 2013.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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.

The claimant is eligible for unemployment insurance benefits. Although the claimant clearly severed the employment relationship, she did so for good cause attributable to the employer. When there is a significant change in the contract of employment, Iowa law states that a resignation following a significant change will not disqualify the claimant from receiving benefits. In this case, the claimant was hired as a production assistant. Her wages were salary and commissions. On August 8, 2013, the claimant's contract was changed to commission only. The employer did this because the claimant was not producing sufficient new business and her salary could not be justified. The change from salary and commission to commission only represented a significant change in the contract of hire. The claimant could no longer count on a certain amount of income each month. Although the employer may have had good business reasons for making the change to the claimant's contract, the administrative law judge believes that those changes were significant for the claimant. The claimant is therefore eligible for unemployment insurance benefits provided she meets all other eligibility requirements.

DECISION:

The decision of the representative dated October 1, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css