IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROBERT H HOLST
Claimant

GREAT LAKES QUICK LUBE LTD PARTNERSHIP
Employer

APPEAL NO. 10A-UI-15647-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02-07-10
Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Work Refusal
Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(1) – Voluntary Leaving – Change in Contract of Hire

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 6, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 10, 2011. The claimant did participate and was represented by Jeff McDaniels, Attorney at Law. The employer did not participate.

ISSUES:

Did the claimant refuse a suitable offer of work?

Did the claimant voluntarily quit his employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was offered a job by Rob, who was the district manager at the time he offered claimant the job. The job offer from Rob included an annual salary of $35,000.00 per year, 50 to 55 hours per week from Monday through Saturday with every Sunday off. Rob never told the claimant that he was required to be on-call. When the claimant arrived for his first day of work on August 16, 2010 he was met by Chris who told him that Rob had been fired and he would have a new boss. Chris also told the claimant that he would have work a minimum of 60 hours per week, including at least one Sunday per month. Additionally the claimant was told that he would be expected to be on-call 24 hours per day, 7 days per week. The claimant was also told that if any employee called in sick, he was personally expected to cover for that employee. He was also told that if any of his employees appeared to be working more than 40 hours per week, he would personally have to cover their hours as no employee was allowed to work overtime. His pay would have been the same. Needless to say the claimant was shocked at the different job expectations than had been presented to him by Rob. While the claimant accepted the job offer that Rob had made to him, he voluntarily quit working after Chris substantially changed the contract of hire that had been made by Rob earlier in the week. The claimant worked for

4 hours on August 16, 2010 from 7:30 a.m. until 12:30 p.m. when he quit. He was not paid for the hours he worked.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

Iowa Code § 96.5-3-a provides:

> An individual shall be disqualified for benefits:
>
> 3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.
>
> a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:
>
> (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
>
> (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
>
> (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
>
> (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.
>
> However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The claimant accepted the job offer made to him by Rob. He showed up and was willing to work under the terms and conditions of the job offer that Rob had made him. The claimant did not refuse a suitable offer of work.

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 job offer that the claimant accepted was vastly different than the work expectations he was given by Chris when he reported for work. Under such circumstances the administrative law judge concludes the employer substantially altered the contract of hire to the extent that the claimant had good cause attributable to the employer for quitting the employment. Benefits are allowed.

DECISION:

The October 6, 2010, reference 02, decision is reversed. Claimant did not refuse a suitable offer of work. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

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