

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**TIM R SPRAIN  
309 PROSPECT  
IOWA FALLS IA 50126**

**BERRY IOWA CORP  
c/o THOMAS AND THORNGREN INC  
PO BOX 280100  
NASHVILLE TN 37228**

**Appeal Number: 04A-UI-10758-DT  
OC: 09/29/04 R: 02  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Tim R. Sprain (claimant) appealed a representative's September 29, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Berry Iowa Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 27, 2004. The claimant participated in the hearing. Judy Hammermeister 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?

FINDINGS OF FACT:

The claimant started working for the employer on March 17, 2003. He worked full time as a machine feeder in the employer's Iowa Falls, Iowa plastic container printing operation. His last day of work was September 13, 2004. He voluntarily quit effective that date.

When the claimant was hired, he started at the rate of \$8.00 per hour. The employer anticipated that he would complete the training to become a machine operator, which would pay a higher rate. He started operator training in April 2003, and at approximately the same time had an increase in his rate of pay to \$9.10 per hour. He would have completed the training approximately the end of May 2003; however, when he was near the end of the training program, he informed the employer, and specifically Ms. Hammermeister, the human resources supervisor, that he did not have the necessary skills to qualify as an operator. He indicated that he would understand if the employer decided it would have to cut his pay.

Despite the fact that the claimant did not become classified as an operator, in June 2003 the employer raised the claimant's pay to \$9.95 per hour, the rate being paid to operators. In August 2003, the claimant's pay was raised to \$10.20, matching the pay for operators. He remained at that rate of pay through July 2004.

In July 2004, the employer was examining employees' pay for a potential cost of living increase. The employer determined that the claimant should not be paid at the same rate of pay as the machine operators. It therefore determined to cut his pay back to the \$8.00 per hour rate as of August 2004, although it did agree to a small cost of living increase to \$8.20. The claimant told the employer several times that he could not continue to work for that little; when Ms. Hammermeister finally told the claimant on September 13, 2004 that the employer could not raise him above that point, the claimant quit.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit for good cause attributable to the employer.

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 "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly. In this case, when the employer knew or should have known that the claimant was being paid a wage beyond his position and even continued to increase the pay, and failed to address the error for over a year after the employer was or should have been aware of the error, the \$10.20 rate of pay became his "contract of hire." While it is understood that the employer had good economic reasons for rectifying its error when it again came to its attention in August 2004, this does not mean that the claimant did not have good reason to quit. "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). The change in the claimant's pay, decreasing it by almost 20 percent, was a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits are allowed.

DECISION:

The representative's September 29, 2004 decision (reference 01) is reversed. 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.

ld/pjs