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

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CON AGRA
COUNCIL BLUFFS
C/O TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03440-DWT
OC 02/22/04 R 01
Claimant: Respondent (1)

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, 4th 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 are 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 Quit

STATEMENT OF THE CASE:

Con Agra – Council Bluffs (employer) appealed a representative's March 16, 2004 decision (reference 01) that concluded Enrique J. Francisco (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant quit his employment for reasons that qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 28, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. The interpreter was available for the hearing until the administrative law judge excused the interpreter. Julie Millard and Lisa Meyer appeared on the employer's behalf.

The claimant called the Appeals Section after the hearing had been closed and the employer had been excused. The claimant made a request to reopen the hearing. Based on the claimant's request to reopen the hearing, 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.

ISSUES:

Is there good cause to reopen the hearing?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 15, 2002. He worked full time as a lead cook. Meyer was his supervisor.

On January 14, 2004, a training specialist documented a verbal conversation with the claimant. The training specialist talked to the claimant after he moved a trash cart without using gloves or washing his hands. The training specialist explained how this could contaminate products. The training specialist also talked to the claimant about failing to identify a stripped bag so other employees knew what ingredient was inside.

On February 3, the employer gave the claimant a verbal warning for violating the employer's policy about staying in the kitchen when pots were flushing. The claimant thought he had time to go to the lab without any problem. While he was in the lab, 1,000 pounds of water was flushed into a holding tank. As a result, the employer had to dump 5,500 pounds of gravy.

On Febraury 10, 2004, the claimant failed to record a temperature in accordance with federal standards. As a result of these three incidents within 30 days, the employer gave the claimant a three-day suspension. The employer also demoted the claimant from a lead cook to a production worker. This meant a change in the claimant's hourly wage from $11.74 to $10.10, a change in his job duties and although he would continue to work first shift, his hours would also change somewhat. The claimant's demotion was effective February 18, 2004.

On February 18, 2004, the claimant informed the payroll office he was quitting and that he was going to try and find another job.

The claimant received the hearing notice prior to the scheduled hearing. He did not read the instructions on the hearing notice. The claimant may not have understood the hearing instructions. He noticed the day and time of the hearing and assumed he would be called for the hearing. The claimant contacted the Appeals Section at 12:25 p.m. on the day of the hearing. By the time the claimant called, the hearing had been closed and the employer had been excused. The claimant requested that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The claimant received the hearing notice prior to the scheduled hearing. When the claimant received the hearing notice, he took note of the time and day of the hearing, but did not read or may not have understood the hearing instructions. If the claimant did not understand the hearing instructions, this would constitute good cause to reopen the hearing. Based on the outcome of this decision, however, it would serve no legal purpose to reopen the hearing. For this reason, the claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The employer did not discharge the claimant. Instead, the employer changed the claimant's job and hourly wage because of three incidents that occurred in a month. On February 18, 2004, the claimant quit his employment. When a claimant quits, he has the burden to establish he quit with good cause. Iowa Code §96.6-2.

The law presumes a claimant has voluntarily quit his employment with good cause when he leaves because of a substantial change in the employment relationship. As of February 18, the employer reduced the claimant's hourly wage from $11.74 to $10.10 or 14 percent reduction.

The employer may assert the reason for the wage reduction was not the fault of the employer. In Wiese v. Iowa Department of Job Service, 389 N.W.2d 676 (Iowa 1986), the Iowa Supreme Court stated: "We believe that a good faith effort by an employer to continue to provide employment for his employees may be considered in examining whether contract changes are substantial and whether such changes are the cause of an employee quit attributable to the employer."

In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in hours was, as a matter of law, a substantial change in the contract of hire. Further, while citing Wiese with approval, the Court stated that:

> It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer…. [G]ood cause attributable to the employer can exist even though the employer be free from all negligence or wrongdoing in connection therewith.

(Id. at 702.) Dehmel, the more recent case, is directly on point with this case. The Court, in Dehmel, concluded a 25 percent to 35 percent pay reduction was substantial as a matter of law, citing cases from other jurisdictions that had held reductions ranging from 15 percent to 26 percent were substantial. Id. at 703. Based on the reasoning in Dehmel, and cases from other jurisdictions a 14 percent reduction in pay may by itself not be substantial. In this case,

the employer also substantially changed the claimant's job duties and work. The reduction in wages in addition to the change in job establishes a substantial change in the employment relationship. The claimant had good cause to leave employment.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's March 16, 2004 decision (reference 01) is affirmed. The claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of February 22, 2004, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/s