

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SAMANTHA J MCMAHON
Claimant

APPEAL 18A-UI-06327-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEMSTONE CONCRETE MATERIALS LLC
Employer

OC: 03/25/18
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 4, 2018, (reference 02) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 25, 2018. Claimant participated. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 30, 2018. Claimant resigned from the employment on May 1, 2018.

Claimant began working for employer on April 23, 2018. During the application process, claimant was told that she would be working 9:00 a.m. to 5:30 p.m. each day. When claimant reported to work on April 23, 2018, she was told that she would be working until 6:30 p.m. or later each day.

Claimant relied upon the employer's promise of working 9:00 a.m. to 5:30 p.m. at the time of hire. Claimant arranged for day care for her three year old child, and she made arrangements to work during those hours. Claimant was unable to change the arrangements she had made for daycare after she had accepted employer's offer of employment.

Claimant notified employer on May 1, 2018 that she had to resign from the employment because of the change in her contract of hire. Claimant did not provide advanced notice, and she was only able to work for one week because of a conflict with the daycare arrangements she had made based off the employer's original offer of hire.

REASONING AND CONCLUSIONS OF LAW:

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 section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.26(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. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). A refusal to accept a night shift position at a sanitarium constitutes a good cause quit attributable to the employer when that shift would endanger the claimant's health. *Forrest Park Sanitarium v. Miller*, 333 Iowa 1341, 11 N.W.2d 582 (Iowa 1943).

Since there was no disqualifying basis for the demotion, the quit because of the change in contract of hire was with good cause attributable to the employer. Inasmuch as the claimant would not be able to find daycare after relying upon the employer's original offer of hire, and employer has not established misconduct as a reason for the change in the contract of hire, the change of the original terms of hire is considered substantial. Thus the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The June 4, 2018, (reference 02) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn