IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BARBIE A CARSTENSEN
Claimant

RAM ENTERPRISES INC
Employer

APPEAL NO. 11A-UI-09994-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/24/11
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 22, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in hearings on August 22 and September 13, 2011, with her attorney, Dennis McElwain. Royce and Deb Maack, the owners; Patrick Schutz, a customer; and Jenny Malone, Heather McGaughlin and Katie Schwarz, employees, participated on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in July 2010. The employer hired her to work as a full-time manager. Part of the claimant's responsibility as a manager was doing the necessary bookwork. Royce Maack, a co-owner, supervised the claimant.

In late January 2011, Deb Maack took over paying the fuel bill. The claimant had been responsible for paying this bill until the employer did not have enough money in the bank account to make this payment. In October the claimant told the employer she would not issue a check when there was not enough money in the bank to cover it. In January 2011, the employer took out a loan and started paying for the fuel delivered to the store.

In October 2010, Royce Maack took the claimant off the schedule that indicates when she worked as a cashier. The claimant went to work in the morning and worked all day as the manager. She worked an average of 45 hours a week. In January 2011, the employer asked the claimant to again schedule herself to work as a cashier. The claimant indicated she wanted to work at night as a cashier. The employer did not want her to work at night, because vendors delivered goods during the day. The employer realized if the claimant scheduled herself to work

as a cashier, all employees' hours would be reduced or one employee would be laid off from work. The employees were worried about a reduction in their hours or being laid off from work.

Shortly after March 2, 2011, the employer learned the claimant told a customer, Schutz, to leave the store because he told the claimant that she did not have to be a bitch about requiring him to show his ID before he bought a cigar. Schutz left the store but returned about 15 minutes later. When he returned, the claimant was not working and he apologized to McGaughlin for his earlier conduct and comment. The next day when he went back to the convenience store, the claimant told him he could not return until he apologized to the employees for his comment. Even though he had already apologized to McGaughlin, he then apologized to the claimant for his derogatory comment.

On March 22, the claimant asked the employer for time off because her sister was dying. Deb Maack told the claimant to take as much time as she needed. On April 2, the claimant's sister passed away. Deb Maack told the claimant on April 3 she would no longer be working as the manager. On April 4, the employer asked the claimant if she could fill in for someone at work. The claimant could not work on April 4 because her daughter had a medical emergency. On Wednesday, April 6, the claimant worked. She traded the shift she was scheduled to work on Thursday with another employee. The claimant did not work on Friday, April 8, because she went to her sister's funeral.

On April 10, the claimant received a text from Deb Maack informing her to give her keys to McGaughlin when she went to work the next day, that the claimant was put back on the schedule and McGaughlin would be doing the books instead of the claimant. The claimant went to work as scheduled on Monday, April 11. When she looked at the schedule, she noticed the employer had her scheduled for about half the hours she had been working. While she counted her cash register drawer, the claimant asked McGaughlin who would be making decisions at the store. She learned that the Maacks would make the decisions until they hired someone to replace the claimant as manager. A few moments later, the claimant indicated she was quitting and left the store.

The claimant quit because the employer reduced her hours almost in half and demoted her by taking away her management and bookkeeping responsibilities.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2).

The law presumes a claimant leaves employment with good cause when she quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The employer asserted there was good cause to demote the claimant, change her work duties, and reduce her hours almost by 50 percent. The claimant, however, had not received any warnings and had no understanding her job was in jeopardy. Since employees were nervous about their hours being reduced or a job being eliminated, the employees who testified had a motive to exaggerate problems they had with the claimant as a manager. The employer asserted the claimant's employment changed because she failed to act as a manager, but the employer did not put her on notice that her job was in jeopardy. 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 may 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. Therefore, the fact the pay reduction may have been due to circumstances beyond the employer's control, under the reasoning of *Dehmel*, is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer. Based on the reasoning in *Dehmel*, the employer substantially changed the claimant's employment by reducing her hours almost by 50 percent. The claimant established good cause for quitting.

DECISION:

The representative's July 22, 2011 determination (reference 01) is reversed. The claimant established good cause for quitting after the employer substantially changed her job duties and reduced her hours by almost 50 percent. The claimant is qualified to receive benefits as of April 24, 2011, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw