

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS E FILSON
Claimant

APPEAL NO. 08A-UI-01907-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PANDA EXPRESS INC
Employer

**OC: 01/27/08 R: 04
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Panda Express, Inc. (employer) appealed a representative's February 14, 2008 decision (reference 01) that concluded Douglas E. Filson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily 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 March 11, 2008. The claimant participated in the hearing. Jennifer Johnson and Thi Tran, the general manager, 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 his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on March 27, 2007. The employer hired the claimant to work as a full-time cook. Prior to mid-January 2008, the claimant worked 40 hours a week.

In December 2007, the claimant talked to Tran about reducing the number of hours he worked because he needed more time to study for the classes he took. The claimant also indicated he would like to sometimes work out front instead of cooking all the time. The claimant was the only English-speaking cook and he wanted a few hours away from the kitchen. The employer listened to the claimant, but the two of them did not talk about any specifics concerning the claimant's hours of work.

In early January, the claimant again talked about reducing his hours because he was failing a class. The claimant wanted to work 30 to 35 hours a week. The employer and claimant again did not talk about any specific reduction of hours. In January the claimant dropped a class so

he could continue working full time. The claimant needed to work as many hours as possible for financial reasons.

The second week of January, the employer reduced the claimant's hours to 30 hours a week. The claimant was scheduled to only work in the front. The claimant talked to Tran and told her he could not afford to work the reduced hours and asked her to schedule him for 40 hours. The employer indicated this was not possible because business was slow. The employer does not anticipate its business to pick up until May.

A week prior to his last day of work, the claimant told Tran and others that if the employer did not schedule him for more hours, he would have to quit. The employer did not schedule the claimant to work any more hours because of a slowdown in the business. The last day the claimant worked as January 24, 2008. He did not show up for work on January 27. When the employer talked to the claimant, the claimant indicated he was not returning to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The law presumes a claimant leaves employment with good cause when he quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The employer asserts the claimant asked that his hours be reduced. The claimant asked for a reduction in hours, but the employer and claimant did not come to an agreement as to how many hours the claimant wanted his hours reduced or what work he wanted to do. The employer did not even immediately reduce the claimant's hours. Instead, the employer waited until business slowed down and the claimant dropped a class. When the employer reduced the claimant's hours, he did not need or what his hours reduced. The employer asserted the reason the claimant's hours were reduced was not the employer's fault. 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 is 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, even though the employer's business slowed down, which was due to circumstances beyond the employer's control, under the reasoning of Dehmel, it is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer.

Without the claimant's consent or mutual agreement, the employer reduced his hours by 25 percent. As a matter of law this is a substantial change in his employment. For unemployment insurance purposes, the claimant quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of January 27, 2008, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 14, 2008 decision (reference 01) is affirmed. The claimant quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of January 27, 2008, he is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employers' account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw