

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL AGRUE
Claimant

APPEAL NO: 10A-UI-12445-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE BON-TON DEPARTMENT STORES INC
Employer

OC: 05/02/10
Claimant: Appellant (2)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Cheryl Agrue (claimant) appealed an unemployment insurance decision dated September 2, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with The Bon-Ton Department Stores, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 28, 2010. The claimant participated in the hearing. The employer participated through Jean Franks, Human Resources Manager. 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:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time office manager from August 15, 2006 through May 2, 2010 when her job was eliminated due to budget cuts. She was moved to a part-time sales associate job which she accepted because she needed the income and insurance. The claimant tried the part-time job but had to voluntarily quit on July 5, 2010 because it was too physically demanding. She was used to sitting down but could no longer sit down. Her back hurt from being on her feet all day and due to budget cuts, the claimant had to cover two separate departments which made her job even more taxing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

Iowa Code § 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.

The claimant quit her employment on July 5, 2010 due to a change in the contract of hire. She went from a full-time, sit-down position to a part-time standing position and although she tried, she could not physically handle the change. 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, 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.

Therefore, under the reasoning of Dehmel, the fact the pay reduction may have been due to circumstances beyond the employer's control is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer. The change in the claimant's contract of hire is considered to be a substantial change.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has satisfied that burden and benefits are allowed.

DECISION:

The unemployment insurance decision dated September 2, 2010, reference 01, is reversed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs