

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ELISE A AHLGREN**  
Claimant

**DIERCKS LTD**  
Employer

**APPEAL 16A-UI-01470-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/03/16  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 28, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 26, 2016. Claimant participated. Marti Ahlgren testified on behalf of claimant. Employer participated through Kelly Dierdks. Ron May appeared on behalf of the employer, but he did not testify.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a nanny from February 10, 2014, and was separated from employment on January 8, 2016, when she quit.

The employer did not tell claimant she was becoming an independent contractor in November 2015. Ms. Diercks told claimant that she and Lisa had a big fight. Ms. Diercks never told claimant that her taxes were no longer being paid by the employer. Ms. Diercks told claimant that her check would be coming from a different account. The amount claimant's check was written for did not change. Prior to November 16, 2015, claimant was paid a gross amount of \$523.00, with a net pay of \$410.64, per week. On November 24, 2015 and after, claimant's check reflected a payment of \$410.64. This amount was the net and gross pay

claimant was receiving. Claimant did not know she was changed to an independent contractor because her pay checks were still from the employer. Claimant was paid her gross amount in January 2016 for the time period from November 2015 until her separation. Claimant was not paid the gross amount until then because the employer's accountant had not figured it out yet.

On January 7, 2016, Ms. Diercks notified claimant that the employer would no longer be able to pay for her health insurance. Later Ms. Diercks informed claimant that the employer was not and had not been paying her taxes. On January 8, 2016, claimant met with Ms. Diercks while the children were napping to discuss some of these issues. Claimant just discovered the employer was not withholding her taxes. The employer had made claimant an independent contractor. Claimant was concerned about being an independent contractor because she thought she would need insurance to be a nanny. Claimant was also concerned because she was going to have to pay all of the taxes. Claimant then gathered her child and left before the end of her shift. On January 10, 2016, claimant sent a text message to Ms. Diercks requesting a termination letter from Ms. Diercks and a check for the amount of money owed to her.

The employer participated in the initial fact-finding interview.

### **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. Benefits are allowed.

For the reasons stated below, this administrative law judge finds claimant was separated from employment when she quit.

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.

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 the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942). 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 recently 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).

Although claimant was not required by law to give the employer notice of her intent to quit, the change to the terms of hire must be substantial in order to allow benefits. The employer changed claimant's employment status in November 2015. The employer made claimant an independent contractor. Claimant was not aware that she was made an independent contractor at this time. The amount of each check claimant received starting November 24, 2015 until her last check were for the same amount as her checks were prior to November 16, 2015. Furthermore, the checks continued to come from the employer. Claimant did not have any reason to believe that her employment status had changed or that her pay had been reduced. However, in January 2016, claimant was notified that the employer had not been paying any taxes from her paychecks since November 24, 2015. After claimant confronted Ms. Diercks on January 8, 2016 about the change in employment status, claimant walked off the job prior to the end of her shift. Then on January 10, 2016, claimant requested a check for the amount owed to her from Ms. Diercks and a termination letter. The employer could reasonably assume from these actions that claimant was quitting.

Although the employer stopped paying/withholding taxes from claimant's paychecks, the amount paid to claimant on each paycheck remained the same; thus her pay was essentially reduced from \$523.00 to \$410.64. This is considered a substantial pay reduction. The employer's argument that claimant was paid the gross amount in January 2016 is not persuasive. The employer held onto part of the pay claimant was due for approximately six weeks. Claimant could have reasonably assumed she was only going to receive the \$410.64. Since there was no disqualifying basis for claimant's reduction in pay, her quit once she found out about the reduction in pay was with good cause attributable to the employer. In the alternative, claimant's quit because she had not been receiving the full amount (\$523.00) every week that she should have since November 24, 2015, was with good cause attributable to the employer. Thus the separation was with good cause attributable to the employer. Benefits are allowed.

**DECISION:**

The January 28, 2016, (reference 01) decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs