

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRINE L ARRINGTON
Claimant

APPEAL NO: 12A-UI-10525-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AT&T MOBILITY SERVICES LLC
Employer

OC: 07/29/12
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

A T & T Mobility Services, L.L.C. (employer) appealed a representative's August 20, 2012 decision (reference 01) that concluded Krine L. Arrington (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 25, 2012. The claimant participated in the hearing. Jacqueline Jones of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Mike Mallon and Mike Kelly. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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 for a good cause attributable to the employer?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on November 26, 2007. He worked full time as a customer service representative at the employer's Davenport, Iowa call center. His last day of work was July 31, 2012. He voluntarily quit work as of that date.

The claimant had suffered a work-related injury, having been diagnosed with tendonitis on November 10, 2011, necessitating surgery. The claimant received benefits under the employer's workers' compensation program for a period of time, but in about December 2011 the workers' compensation carrier determined that the claimant's condition needed to be re-evaluated. He underwent an MRI, but by July 27 he had not received any results.

In the meantime, the workers' compensation carrier stopped paying the partial benefits he had been receiving since he had been able to return to work part time since February 2012. The employer indicated there was nothing it could do, that it was in the hands of the workers' compensation carrier. However, because the claimant still had work restrictions, the employer was only providing the claimant with about 15 to 20 hours of work per week. After several months of receiving only minimal work hours from the employer and no offsetting workers' compensation benefits, the claimant found he could no longer pay his bills. He then informed the employer on July 27 that because of his lack of earnings or offsetting workers' compensation benefits, he would need to move to live with his daughter in Florida. As a result, his last day of work with the employer was July 31.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. 871 IAC 24.26(1). A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787 (Iowa 1956). While the employer may not have been able to either compel its workers' compensation carrier to resolve the benefit issue or to provide the claimant with more hours than the claimant's restrictions would allow, it was not providing the claimant with the same or a comparable wages as he had been working before the work-related injury; its inability to do so was a substantial change in the claimant's contract of hire. *Dehmel*, supra. Benefits are allowed.

DECISION:

The representative's August 20, 2012 decision (reference 01) is affirmed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css