

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GEOFFREY A BURD
Claimant

HY-VEE INC
Employer

APPEAL 18A-UI-07757-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/24/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Geoffrey A. Burd (claimant) filed an appeal from the July 12, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with Hy-Vee, Inc. (employer) because he was no longer willing to work the hours his job required and he was aware of the hours required when he was hired, which is not a good cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on August 8, 2018. The claimant participated personally and was represented by Attorney Katherine Haganman. The employer participated through Store Director Ryan Benz and was represented by Ajah Anderson from Corporate Cost Control. The Claimant's Exhibits 1 and 2 were admitted into the record without objection.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as Frozen Food Manager beginning on May 28, 2015. He then transferred to Produce where he worked in a leadership position until July 2017. In July 2017, the prior Hickory House/Comfort Foods Manager stepped down from her position due to issues in the department. The claimant accepted the position believing it would further his career with the employer. The claimant worked in this position until June 20, 2018, when he quit his employment.

The claimant was initially hired to work 45 hours a week which was Store Director Ryan Benz's expectation for all of his managers. The claimant was not responsible for creating the schedule when he worked in the Produce Department unless the manager was on vacation. When he took on his role of Hickory House/Comfort Foods Manager, he was responsible for creating the schedule, supervising and training employees, and upholding food and cleanliness standards.

The claimant had more employees when he started in the Hickory House/Comfort Foods Department. However, he had staffing issues and some turnover. The claimant was assigned

new employees when possible and, when asked, other managers would help out with additional work in the department. The claimant began scheduling himself staggered shifts throughout the day to cover the day-to-day running of the department. He worked an average of 52.56 hours per week from the pay period that included July 9, 2017 through the end of his employment, excluding the weeks in September and December 2017, which were not included in Exhibit 1.¹ When broken down by month, the claimant averaged the following hours per week:

July 2017	54.82
August 2017	59.55
October 2017	52.30
November 2017	56.10
January 2018	46.53
February 2018	48.35
March 2018	47.10
April 2018	48.06
May 2018	64.58
June 2018	53.60

The claimant complained of a lack of staff beginning in February 2018. The claimant did not feel he had adequate staffing or people who could perform all of the necessary job tasks. The claimant did not believe his job performance was meeting the employer's standards and he did not want to hurt his reputation but no one in management told him that he needed to leave and continued work was available. The claimant submitted his resignation on June 10 stating his last day would be June 24.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 871-24.25 provides, in relevant part:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following

¹ When determining the average hours worked, all hours including vacation and flex were added into the weekly totals. If those hours were removed from the calculation, the claimant's average hours worked would be 50.4.

reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

...

(18) The claimant left because of a dislike of the shift worked.

...

(21) The claimant left because of dissatisfaction with the work environment.

...

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). When a claimant provides multiple reasons for leaving his or her employment, each reason must be analyzed to determine if the reasons combined gave the claimant good cause attributable to the employer for leaving his or her employment. *Taylor v. Iowa Dept. of Job Serv.*, 362 N.W.2d 534, 540-41 (Iowa 1985).

The claimant stated he left due to a change in his contract of hire as he was made to work more than 45 hours a week and disliked working staggered shifts throughout the workday. The claimant was responsible for his schedule and training employees to adequately perform job tasks. The claimant's dissatisfaction with the staggered schedules, job environment, and his belief that he was not meeting the employer's standard when continuing work was available, does not constitute good cause attributable to the employer.

The claimant experienced a change in contract of hire when he took over as the Hickory House/Comfort Foods Manager from his leadership position in Produce. The claimant voluntarily accepted this position in an attempt to further his career with the employer. The employer did not breach the contract of hire because the parties mutually agreed to the change

in his contract of hire. Additionally, the claimant knew of the issues in the department when he accepted the position and that additional work would be required.

Even if the employer had breached the contract of hire, 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). Using this same reasoning in the current case, an increase in hours by 25 to 35 percent could also create a change in the contract of hire. The claimant's hours worked each week would have to regularly exceed 56.25 to 64.60 to be considered good cause attributable to the employer for his separation. The claimant's average weekly hours worked during his entire time in that position was 52.56, which is an increase in expected hours but does not rise to the generally accepted level of substantial. Additionally, only two of the months, August 2017 and May 2018, exceeded the weekly average of 56.25 or 25 percent more hours than expected. The claimant has not established that he voluntarily quit due to a substantial change in the contract of hire. Benefits are denied.

DECISION:

The July 12, 2018, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn