IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CRYSTAL M MIKESELL Claimant **MENARD INC** Employer	**APPEAL 17A-UI-08534-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/30/17** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 14, 2017 (reference 01) unemployment insurance decision that held claimant was ineligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 7, 2017. Claimant, Crystal M. Mikesell, participated personally. Employer, Menard Inc., participated through witness Travis Spiker.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time. Claimant began her employment on February 16, 2007 and her employment ended on July 31, 2017, when she voluntarily quit. Claimant worked in several positions with this employer during her 10-year employment. The position she held at the time of separation was grocery specialist and she moved into this position at the beginning of July of 2017.

During claimant's entire employment period, she was never required to work evenings and weekends. Claimant was told by Mr. Spiker when she accepted the position that she would keep her same hours as her previous position and would not be required to work evenings and weekends. This was important to claimant because she had family obligations during evenings and weekends.

On July 31, 2017, claimant received information that she was scheduled to work a Sunday shift. She discussed this matter with Mr. Spiker, who told her that his supervisors instructed him that all full-time staff needed to work evening and weekend shifts. Claimant then voluntarily quit due to the change in her scheduled shifts.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer.

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 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 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. In this case, the claimant accepted the position based upon the assertion she would not be required to work evening and weekend shifts. The new requirement for her to work evening and weekend shifts was a substantial change of the original terms of hire. Thus, the separation was with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The August 14, 2017 (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Dawn Boucher
Administrative Law Judge

_____
Decision Dated and Mailed

db/rvs