

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTIANE RISTAU
Claimant

MENARD INC
Employer

APPEAL 18A-UI-07688-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/17/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 6, 2018, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 6, 2018. Claimant participated. Employer participated by Robert McAvoy, Front End Manager and was represented by Paul Hammell, Attorney at Law. Employer's Exhibit 1 was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 14, 2018. Claimant submitted her resignation on that date because she was offered a demotion which included less pay and hours.

Claimant began working for employer on October 31, 2017. Claimant had difficulty keeping her cash drawer balanced throughout each shift. Claimant received multiple written warnings for her mistakes, and she was offered advice and extra training by employer. Claimant continued having problems balancing her cash drawer and keeping track of checks throughout her employment.

Claimant received her last warning on June 13, 2018. Claimant overcharged a customer nearly \$1,400.00 dollars. Claimant was suspended for three days and she was offered a different position in the store where she would not be handling money. Claimant would be working less hours, and her pay would be reduced from \$12.50 an hour to \$11.50 an hour.

Claimant told employer she would consider employer's offer on June 13, 2018. Claimant later contacted employer on or about June 14, 2018 and tendered her resignation because she did not want to work fewer hours.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship after being reprimanded and demoted.

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. 871-24.26(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). A refusal to accept a night shift position at a sanitarium constitutes a good cause quit attributable to the employer when that shift would endanger the claimant's health. *Forrest Park Sanitarium v. Miller*, 333 Iowa 1341, 11 N.W.2d 582 (Iowa 1943).

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). While the circumstances might be considered a change in the contract of hire, the employer demoted her because she continued to make multiple errors which caused the employer to lose money after being warned on multiple occasions. Since the claimant continued making errors after receiving multiple detailed written warnings, her actions are considered misconduct due to repeated negligence. The employer's action to demote her and retrain her rather than discharge her did not give the claimant a good cause reason for leaving the employment. Benefits are denied.

DECISION:

The July 6, 2018, (reference 01) decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn