

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JUDITH A PRICE**  
Claimant

**APPEAL 15A-UI-08836-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCOTTS MANUFACTURING COMPANY**  
Employer

**OC: 07/12/15  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 6, 2015, (reference 02) unemployment insurance decision that denied benefits based upon the determination she voluntarily quit her employment for personal reasons 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 27, 2015. Claimant Judith Price participated on her own behalf. Employer Scotts Manufacturing Company participated through Brant Carius. No exhibits were received.

**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: Claimant was employed full time as a production lead beginning March 14, 2005, and was separated from employment on April 11, 2015. The claimant experienced stress-related health issues at the beginning of 2015, which necessitated leave protected under the Family Medical Leave Act (FMLA). Her leave began on February 20, 2015 and her initial return to work date was March 23, 2015.

On or about March 18, 2015, Human Resources Manager Jeremy Tabor notified the claimant when she returned from leave she would be moved to a packaging tech position. She would go from a day-shift position earning \$23.50 an hour and managing 50 – 100 contract and temporary employees to working a swing shift which involved a rotating shift, a reduction in pay of \$5.60 an hour, and would not have any management duties included. The claimant contacted the employer's ethics committee to file a complaint. She also experienced increased anxiety and required another two weeks of approved leave with a return to work date of April 2, 2015.

Tabor called the claimant back a few days later and told her the committee advised him to return her to the production lead position so it did not look like he was retaliating against her for

using leave under the FMLA. He explained she would be returned to her same job title, pay, and shift; however, she would not be doing her normal duties as another employee had already assumed her duties. He also stated after the seasonal layoff that would begin in June, her position would be changed to packaging tech when she returned.

The claimant returned to work on April 2, 2015 with no restrictions. When she returned, she was listed as a packaging tech. There had only ever been one production lead in the department and another employee was performing that job function. The claimant's last day worked was April 10, 2015.

### **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. Benefits are allowed.

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 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).

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. IDHS*, 461 N.W.2d 603, 607 (Iowa App. 1990).

Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

The claimant had her management duties removed. The employer explained it was to reduce her stress; however, she did not request an accommodation to her work environment nor did the employer talk to her about a reasonable accommodation. The employer testified that its usual practice is not to reduce an employee's pay when he or she is demoted to another position. However, the employer's witness was not present when the claimant spoke to Tabor and the claimant credibly testified he told her that her pay would be reduced. Inasmuch as the claimant would suffer a demotion with relation to her duties combined with what she reasonably believed would be an eventual 23 percent reduction in pay, and the employer has not established misconduct as a reason for the effective demotion, the change of the original terms of hire is considered substantial. Thus, the separation was with good cause attributable to the employer. Benefits are allowed.

**DECISION:**

The August 6, 2015, (reference 02) unemployment insurance decision is reversed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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