

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY RUIZ
Claimant

DOLGENCORP LLC
Employer

APPEAL 21A-UI-13613-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/07/21
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On June 4, 2021, the claimant, Kimberly Ruiz, filed an appeal from the May 25, 2021 (reference 03) unemployment insurance decision that denied benefits based on the determination that claimant voluntarily quit employment with the employer, Dolgencorp, LLC, without good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on August 12, 2021. Claimant participated personally. The employer did not participate. Claimant's Exhibit A was admitted to the record.

ISSUE:

Did the claimant quit employment without 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 an assistant store manager beginning on October 8, 2018, and was separated from employment on March 9, 2021, when she resigned.

At some time prior to claimant's resignation, in approximately November 2020, a new store manager was brought into the store where claimant worked—Ben Smeenck. Within days, Smeenck changed a number of significant things in the store and cut claimant's hours by approximately half. Claimant had been hired as a full-time employee, but she began receiving fewer hours than some of her part-time subordinates received. Claimant complained to various people, including the district manager and HR. She never received a meaningful response to her complaints about her hours.

Also around this time, claimant was voicing concerns about the employer's COVID-19 mitigation strategies. The employer failed to install a shield at the front counter to protect employees at the register, and it did not provide sufficient cleaning products to allow employees to sanitize regularly. When claimant complained about these issues, nothing was done in response.

Finally, on two occasions, claimant developed symptoms that were indicative of COVID-19. On both occasions, she struggled to receive the pay guaranteed by the employer for employees

with COVID-19 symptoms. She knew of others in the store who had received the pay with no questions asked by the employer.

Finally, in the last week of her employment, claimant was out of work due to COVID-19 symptoms. She inquired again about COVID-19 pay. Smeenck told her she needed a doctor's note. Claimant pointed out a statement on the website that indicated no doctor's note was needed. Smeenck continued to assert that she needed to provide a doctor's note. Claimant concluded that she could not continue to work in that environment, and she resigned. In her resignation, she provided a list of reasons—those outlined here—for her resignation.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

Claimant has alleged a substantial decrease in her hours and the associated pay beginning in approximately November 2020. Though she continued to work thereafter, she did complain about her hours, and sought to increase them. A decrease in claimant's hours and wages by half is substantial enough to establish good cause attributable to the employer for claimant's resignation. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The May 25, 2021, (reference 03) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

August 18, 2021
Decision Dated and Mailed

ar/mh