IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DANIEL F BANNISTER
1248 – 13TH ST
MARION IA 52302-2557

KUM & GO LC
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04335-DW
OC: 03/19/06 R: 03
Claimant: Respondent (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Kum & Go (employer) appealed a representative's April 10, 2006 decision (reference 01) that concluded Daniel F. Bannister (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Cedar Rapids on July 19, 2006. The claimant participated in the hearing. Jebidiah Paige, the sales manager when the claimant worked, and Dan DeLarm, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for nondisqualifying reasons?

FINDINGS OF FACT:

The claimant worked for the employer about two years. Until February 2006, the claimant worked full-time. The claimant worked primarily the third shift, but worked as needed on other shifts as well.

In February 2006, the employer reduced the claimant's hours to approximately 24 hours a week. When the claimant's hours did not increase in a couple of weeks, the claimant talked to DeLarm to find out why his hours had been reduced. The employer's explanation that the claimant's reduction in his hours was the result of a computer scheduling "glitch" did not make sense to the claimant. The employer moved an employee who had been working full-time during the day to working full-time on third shift. The employer reduced the claimant's hours because the employer was not satisfied with his work performance. The claimant had no prior understanding the employer was not satisfied with his work performance and would reduce his hours if his performance did not improve. The employer had not warned the claimant prior to reducing his hours that his hours would be reduced if he did not improve his work performance.

In mid-March after the claimant noticed he was still only scheduled to work about 24 hours a week, he went to the store and told Paige he had had enough. The claimant asked Paige to have DeLarm contact the claimant. Paige understood the claimant had quit and informed DeLarm the claimant wanted to talk to him and that the claimant had quit. The claimant, however, had not intended to quit this day. The claimant was not scheduled to work for two days. On the day the claimant was again scheduled to work, he went to the store again and talked to Paige. The claimant learned Paige had contacted DeLarm even though DeLarm had not yet contacted the claimant. The claimant was upset because DeLarm had not contacted him. The claimant then assumed the employer discharged him because he had previously indicated he was going to file a claim for unemployment insurance benefits. DeLarm had not contacted him and he was no longer on the schedule. The claimant did not report to work again. When the claimant did not report to work as scheduled, the employer terminated his employment relationship.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharged him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts establish the claimant voluntarily quit his employment when he failed to return to work as scheduled. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code § 96.6.2.

The law presumes a claimant leaves employment with good cause when he quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The employer asserted the claimant's hours were reduced from 40 to 24 hours a week because the claimant's work performance was not satisfactory. The employer, however, never warned the claimant that his

hours would be reduced for poor work performance. Also, the employer's characterization of the claimant's work performance was general and not detailed or specific. Without notice, the employer reduced the claimant's hours and gave full-time third-shift hours to an employee who had been working the day shift. The claimant knew the employer's explanation that a computer scheduling program was to blame for his reduction in hours was bogus. After talking to the employer about the problem with his hours being reduced, the claimant waited to see if the problem would be corrected. When it was not, the claimant told the employer he had had enough, but asked DeLarm to contact him. When DeLarm did not contact him, the claimant quit his employment by failing to return to work again or contacting DeLarm himself.

The employer asserted the reason for the reduction in hours was not the fault of the employer. Instead, the hours were reduced because the employer asserted the claimant's job performance was not satisfactory. In Wiese v. Iowa Department of Job Service, 389 N.W.2d 676 (Iowa 1986), the Iowa Supreme Court stated: "We believe that a good faith effort by an employer to continue to provide employment for his employees may be considered in examining whether contract changes are substantial and whether such changes are the cause of an employee quit attributable to the employer."

In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 to 35 percent reduction in hours was, as a matter of law, a substantial change in the contract of hire. Further, while citing Wiese with approval, the Court stated that:

> It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer…. [G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith.

(Id. at 702.) Dehmel the more recent case is directly on point with this case. Therefore, the fact the reduced hours may have been due to circumstances beyond the employer's control, under the reasoning of Dehmel, is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer.

The next issue is whether a 40 percent reduction is a substantial change in the contract of hire. The Court in Dehmel concluded a 25 percent to 35 percent pay reduction was substantial as a matter of law, citing cases from other jurisdictions that had held reductions ranging from 15 percent to 26 percent were substantial. Id. at 703. Based on the reasoning in Dehmel, a 40 percent reduction in hours (pay) is substantial, and the claimant had good cause to leave employment. Therefore, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 10, 2006 decision (reference 01) is modified, but the modification has no legal consequence. The employer did not discharge the claimant. Instead, the claimant voluntarily quit his employment for reasons that constitute good cause. As of March 19, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/cs