

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUCY M WILLIAMS
Claimant

ADECCO USA INC
Employer

APPEAL 16A-UI-09417-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/17/16
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the August 19, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant quit after a change in her contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on September 19, 2016. The claimant, Lucy M. Williams, participated. The employer, Adecco USA, Inc., participated through Marsha Heck, recruiter; and Amelia Gallagher of Equifax/Talx represented the employer. Claimant's Exhibits A and B and Employer's Exhibit 1 were received and admitted into the record without objection. Following the hearing, the administrative law judge took official notice of the 2016 calendar.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time (35 hours per week), most recently placed at Meredith as a tablet marketing coordinator, from December 1, 2015, until June 9, 2016, when she voluntarily quit her placement due to a reduction in hours. Since the onset of claimant's assignment at Meredith, she worked 35 hours each week. On May 24, 2016, claimant's on-site boss told her that her hours were being cut from 35 hours each week to approximately 15 hours each week, due to claimant's efficiency in performing the job. Claimant's final day working at Meredith was Thursday, June 9, 2016.

On Tuesday, June 14, claimant emailed Deanna Dunn and notified her that she resigned from her placement at Meredith. (Exhibit A) Claimant stated her reason for leaving the placement at Meredith, and she requested an additional assignment. Dunn responded to thank her for the update. To date, claimant has not received any additional assignments from the employer. The employer maintains a policy that complies with the specific terms of Iowa Code § 96.5(1)j. (Exhibit 1)

The administrative record reflects that claimant has received unemployment benefits in the amount of \$4000.00, since filing a claim with an effective date of July 17, 2016. Claimant received gross weekly benefits of \$506.00 for six weeks, beginning with the week ending July 23, 2016; and ending with the week ending August 27, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was 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.

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 rule 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).

Here, claimant credibly testified that her hours – and as a result, her pay – were being reduced by more than half. This was a decision the employer made after learning how efficient claimant was at the job, and it was not disciplinary in nature. This change of the original terms of hire is considered substantial. Claimant's separation from her work assignment was with good cause attributable to the employer.

The next question is whether claimant's separation from the temporary agency employer is disqualifying. Iowa Code § 96.5-(1)-j 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. But the individual shall not be disqualified if the department finds that:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The

employee must be advised by the employer of the notification requirement in writing and receive a copy...

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Since claimant contacted the employer within three working days of the notification of the end of the assignment, indicated availability for work, requested reassignment, and there was no work available, benefits are allowed, provided she is otherwise eligible.

DECISION:

The August 19, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. As benefits are allowed, the issues of whether claimant was overpaid benefits, whether claimant is obligated to repay benefits, and whether the employer's account should be charged are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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