

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DIXIE L MOORE**  
Claimant

**J PETTIECORD INC**  
Employer

**APPEAL 16A-UI-04901-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/20/16**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 25, 2016, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 11, 2016. Claimant participated. Employer participated through operations manager, Bruce Greiner. Administrative Assistant Tammy Pearson was present on behalf of the employer. Employer Exhibits One, Two, and Three were admitted into evidence with no objection.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to 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 dump truck driver/laborer from April 6, 2015, and was separated from employment on January 25, 2016, when she quit.

On January 4, 2016, claimant submitted a letter of resignation to Mr. Greiner. The employer accepted her resignation. Claimant told the employer she had family issues and needed to leave the state because of those issues. Claimant did not say anything about her hours as a reason for quitting.

All employees that are hired as drivers by the employer are hired as drivers/laborers. The employer offers at least forty hours of work every week, but it may be shop work (cleaning, stickers, etc.) when things are slow. The employer discusses this with employees during their initial interviews and hiring process. The employer does allow employees to call in absent during slow times with no repercussions (this is a part of the employer's bonus/incentive program). The employer always offers a minimum of forty hours per week, even when the weather affects the work. Claimant was aware that the job was dependent on the weather. Claimant was aware that if there was no work because of weather, then she did not get paid. If the weather dictated that there was no work for claimant as a dump truck driver, then the

employer did offer her hours in the shop. The employer offered claimant a minimum of forty hours per week.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment without good cause attributable to the employer. Benefits are denied.

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

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).

Although claimant was not required by law to give the employer notice of her intent to quit, the change to the terms of hire must be substantial in order to allow benefits. In this case, claimant was told at the time of hire that the employer would offer her a minimum of forty hours per week. Throughout claimant's employment with the employer, she was offered forty hours per week,

but at various times, claimant either choose not to work all the hours offered or was absence because of illness. Employer Exhibit Three. Although not all of the hours offered were driving a truck, the employer did give claimant an opportunity to perform work for at least forty hours a week as was contemplated at the time of hire. Claimant was aware when she was hired that the weather would affect the availability of driving hours.

While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Claimant has not met the burden of proof to show she quit with good cause attributable to the employer. Benefits are denied.

**DECISION:**

The April 25, 2016, (reference 02) decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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