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

FAYE A VOSS
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DYNAMIC TUBE INC
DTI
PO BOX 760
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Appeal Number: 04A-UI-03692-SWT
OC 02/29/04   R 04
Claimant: Respondent (1)

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:

The employer appealed an unemployment insurance decision dated March 30, 2004, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on April 26, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Dan Pawlawski participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked for Dynamic Metal Forming from August 7, 1995 to August 6, 2003. On August 7, 2004, Dynamic Tube Inc (DTI) purchased the plant where the claimant worked. She worked for DTI from August 7, 2004 to February 28, 2004. When DTI took over the business, it assured employees that it would maintain the employee's benefits and compensation.

The claimant was paid $14.98 per hour from August 7, 2003 to September 1, when her wage was increased to $15.57 per hour. She received 15 days of vacation, 11 paid holidays, medical/dental insurance with a $13.85 per week employee premium, and contributions into a 401K plan.

In early February 2004, the employer announced that it was going to change the terms of employment due to economic problems. Under the proposed plan, the claimant's wage rate was going to be reduced to $15.19 per hour. She was to receive 12 days of vacation, 7 paid holidays, medical/dental insurance with an increase in the premium to $19.75 or $63.99 per week depending on the plan chosen, and reduced employer contributions in to the 401K plan. The claimant notified the employer of her objections to the planned changes in the terms of her employment and her intention to quit if the employer insisted on the changes. The employer would not change its proposal, so the claimant voluntarily quit employment on February 28, 2004, due to the substantial change in the terms of her employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code Section 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.

871 IAC 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 employer argues that the pay cut was not substantial and the quit was not for good cause attributable to the employer because the reasons for the changes were not due to fault by the employer.

In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in hours was, as a matter of law, a substantial change in the contract of hire. 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 be free from all negligence or wrongdoing in connection therewith.

(Id at 702.) Therefore, the fact that the change in the terms of employment was due to circumstances beyond the employer's control and motivated by economic concerns, under the reasoning of Dehmel, is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer.

The claimant voluntarily quit employment with good cause in this case because the employer substantially changed the terms of the claimant's employment when all the changes are considered.

DECISION:

The unemployment insurance decision dated March 30, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf