

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

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Appeal Number: 04A-UI-00031-SW  
OC 11/30/03 R 01  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 24, 2003, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A hearing was held on May 14, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Richard Sturgeon. Dewey Sloan participated in the hearing on behalf of the employer with witnesses, Margaret Dull and Marlene Franks. Exhibits A through F and One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time as the manager of the employer's travel agency from 1982 to October 3, 2003. Margaret Dull is the owner of the business.

Prior to January 2003, the claimant was a salaried employee receiving \$1,375.00 every two weeks. In January 2003, financial problems with the business resulting from the decline in airline revenue caused Dull to change the compensation arrangement for the claimant and other employees. Under the new arrangement that went into effect in March 2003, the claimant was paid a guaranteed salary of \$800.00 every two weeks plus commissions on his sales.

In August 2003, Dull proposed another change to hold down expenses. The proposal was that if the employer terminated another employee, the claimant could remain at the \$800.00 every two weeks plus commissions, but if the employee was retained, the claimant's wages would be reduced to \$500.00 every two weeks plus commissions. The claimant chose to discharge the other employee, but on September 15, 2003, Dull informed the claimant that she had decided to keep the other employee and reduce his wages to \$500.00 every two weeks plus commissions, effective October 1, 2003.

On September 18, 2003, the claimant notified the employer of his intention of quitting employment effective October 1, 2003, as a result of the reduction in his pay. The claimant made it clear that he could not afford the additional cut in his guaranteed wages. Later, he agreed to work until October 3, 2003, as long as the employer paid him at the \$800.00 per two weeks rate of pay.

#### 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 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, especially during a recessionary period, 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.”

On the other hand, 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. 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 be free from all negligence or wrongdoing in connection therewith.

(Id. at 702.) Dehmel is a more recent precedent and, considering the facts, is more directly on point. Therefore, the fact that the pay reduction was due to circumstances beyond the employer’s control and motivated by financial 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 next issue is whether a 37.5 percent pay 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 19 percent to 26 percent were substantial. Id. at 703. Based on the reasoning in Dehmel, a 37.5 percent reduction in pay is also substantial, and the claimant had good cause to leave employment. The employer argues that the pay cut was not substantial because he could have made up the difference in commissions on sales. The problem with the employer’s argument is that the \$500.00 was the only wage guaranteed by the employer and commissions were subject not only to sales efforts but the effects of the economy. Marlene Franks, for example, was not able to offset the reduction in her pay and was paid less in guaranteed wages and commissions in 2003 than she received in salary in 2002.

The claimant has also satisfied the requirements of Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The Iowa Supreme Court has ruled that in order to qualify for unemployment insurance benefits, an employee must take the reasonable step of informing her employer that the change in the contract of hire was unacceptable so the employer has the opportunity to correct those conditions before an employee takes the drastic step of quitting employment. Id. at 448.

#### DECISION:

The unemployment insurance decision dated December 24, 2003, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/b