

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

GAIL A WARREN
Claimant

APPEAL NO: 12A-UI-06263-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALDI INC
Employer

OC: 08/14/11
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Gail A. Warren (claimant) appealed a representative's May 17, 2012 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Aldi, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 21, 2012. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the claimant, 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 for a good cause attributable to the employer?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on April 9, 2012. She worked full time as a cashier at the employer's Urbandale, Iowa store. Her last day of work was April 30, 2012. She voluntarily quit work on May 2.

The store manager, who had not been the person who interviewed or hired the claimant, had a three week review with the claimant on April 30. During that review the store manager informed the claimant that once she was through the normal training process on the cash register, she would be scheduled to come in once or twice a week to unload the truck. The claimant questioned this, as the position as advertised and as discussed with the district manager during the interview process had only dealt with cashiering duties on the register. The position as advertised and discussed only indicated that shifts could begin as early as 6:00 a.m., but when

persons were scheduled to unload the truck, they were required to come in at 5:00 a.m. The claimant indicated to the store manager that she did not think that she could physically perform the duties involved in unloading the truck.

The district manager told the claimant to think about the situation over the weekend, but indicated to her that if she did not think she could handle the physical requirements of doing the unloading of the truck, he would prefer that she quit immediately rather than go through the full training process on the register. As a result, on May 2 the claimant called the store manager and agreed that she would quit.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. 871 IAC 24.26(1). A “contract of hire” is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a “contract of hire” to exist. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986).

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for requiring “cashiers” to perform additional duties beyond normal cashiering, the claimant was not advised of what those other duties might be when she was hired, and the requirement that she perform the additional duties was a substantial change in the claimant’s contract of hire, as well as being misrepresentation of the type of work. *Dehmel*, supra; 871 IAC 24.26(23). Benefits are allowed.

DECISION:

The representative’s May 17, 2012 decision (reference 02) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs