

**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**

**SHARON E HEMPHILL  
514 S STARR AVE  
BURLINGTON IA 50601**

**DEERY BROTHERS INC  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000**

**Appeal Number: 05A-UI-00598-DT  
OC: 12/19/04 R: 04  
Claimant: Respondent (4)**

**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 Leaving

STATEMENT OF THE CASE:

Deery Brothers, Inc. (employer) appealed a representative's January 13, 2005 decision (reference 01) that concluded Sharon E. Hemphill (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 1, 2005. The claimant participated in the hearing and presented testimony from one other witness, James Vaughn. Michelle Hawkins of Employer's Unity appeared on the employer's behalf and presented testimony from one witness, Jim Smith. Based on the evidence, the arguments of the parties, 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 effective either December 13, 2004 or February 25, 2005?

FINDINGS OF FACT:

The claimant started working for the employer on September 22, 2003. She worked full time as a sales greeter in the employer's West Burlington, Iowa automobile dealership. Her last day of work was December 13, 2004.

When the claimant had begun her employment, her standard schedule was from 8:00 a.m. to 5:00 p.m. Monday through Friday; however, she had adjusted her hours from time to time to accommodate special needs on behalf of the employer. For approximately the six weeks prior to December 10, she had been working 8:00 a.m. to 8:00 p.m., Monday through Friday, due to the loss of the employer's nighttime greeter.

On December 10, the claimant met with the employer's owner to discuss her schedule. She informed him that she was going to be moving to Arizona with her fiancé, Mr. Vaughn in March 2005, and it was agreed that her last day of work would be February 25, 2005. The owner proceeded to outline a new work schedule for the claimant through February 25, 2005 that would have her working until 8:00 p.m. three nights per week, and from 10:00 a.m. to 5:00 p.m. on Saturdays. The claimant expressed concern whether that schedule would work with her family situation, and indicated she would discuss the matter with Mr. Vaughn. On December 13, 2004, she reported that the change in schedule was not acceptable. Since the employer would not modify the schedule as outlined, she quit.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant voluntarily quit for good cause attributable to the employer effective December 13, 2004.

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.

“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). 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, nor is it pertinent that the claimant remained an “at will” employee. The change in the claimant’s schedule which was to have been implemented was a substantial change in the claimant’s contract of hire. Dehmel, supra. Benefits are allowed as of December 13, 2004.

The second issue in this case is whether the claimant voluntarily quit for good cause attributable to the employer effective February 25, 2005.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The claimant did express her intent not to continue work with the employer after February 25, 2005. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. Leaving employment in order to move to another locality to be with a spouse is not good cause attributable to the employer. 871 IAC 24.25(2), (10). Even if the situation subsequently changed and a decision was made not to move, once the notice to quit was given by the claimant and accepted by the employer, the quit is disqualifying; an employee does not have the right to rescind an advance notice of resignation previously accepted by the employer. 871 IAC 24.25(37); Langley v. Employment Appeal Board, 490 N.W.2d 300 (Iowa App. 1992). The claimant has not satisfied her burden. Benefits are denied effective February 27, 2005.

#### DECISION:

The representative’s January 13, 2005 decision (reference 01) is modified in favor of the employer. The claimant voluntarily quit without good cause attributable to the employer effective February 27, 2005. The claimant’s December 13, 2004 quit prior to the effective date of her February quit was for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits from December 14, 2004 until February 26, 2004, if she is otherwise eligible. The employer is chargeable for any benefits paid for that period. As of February 27, 2005, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer is not chargeable for any benefits after February 27, 2005.

ld/sc