

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMIE L MCCARTNEY

Claimant

CHILDREN AND FAMILIES OF IOWA

Employer

APPEAL 15A-UI-08128-DG

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/07/14

Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 15, 2015, (reference 05) that held claimant ineligible for unemployment insurance benefits. After due notice, an in-person hearing was scheduled for and held on November 12, 2015 in Des Moines, Iowa. Claimant participated with the assistance of Melissa C. Hasso, Attorney at Law. Employer participated by Bryan O'Neill, Attorney at Law. Claimant's Exhibits A through D were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant began working as a full-time program manager for employer on December 1, 2014. Claimant last worked for employer on July 2, 2015.

When claimant was hired she was offered employment as a full-time employee with a 40-hour workweek. Claimant would work 8:00 a.m. to 4:00 p.m., Monday through Friday with the possibility of having to work past 4:00 p.m. occasionally and perhaps a few hours on the weekend in an emergency. Claimant's first week or two of employment were consistent with what she was offered, and she enjoyed her job. Claimant was a salaried employee.

Several weeks later claimant's workload began to increase significantly. She had to work most weekends, and at night. Claimant questioned the change with her supervisors and was told that it was a temporary situation and things would get better soon.

After months of working 80 plus hours a week claimant began to break down physically. She sought medical and psychological treatment, and was told by her therapist that she should no longer work for this employer.

Claimant liked the work she was doing, and she tried to discuss the change in her contract of hire with her employer on June 25, 2015. She was told at that time that her hours and duties would not change, and that there was nothing the employer was able to do for her at that time. Employer made it clear to claimant that if she wanted to keep working there she would need to continue working the extra hours. Claimant later submitted her resignation on or about July 2, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with good cause attributable to the employer.

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.

Iowa Code § 96.5(1) provides:

Causes for disqualification.

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:

24.26(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.

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).

Since there was no disqualifying basis for the claimant's work hours to double, the quit because of the change in contract of hire was with good cause attributable to the employer. Inasmuch as the claimant had suffered a constructive decrease in her income because of the number of hours she had to be at work without any compensation for the extra hours, and employer has not established misconduct as a reason for the effective demotion and lack of pay, the change of the original terms of hire is considered substantial. Thus the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The July 15, 2015, (reference 05) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/css