IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CODY A TERRELL Claimant **ALLIEDBARTON SECURITY SVCS LLC** Employer	**APPEAL 16A-UI-04440-DL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/20/16** **Claimant: Respondent (5)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the April 7, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on April 29, 2016. Claimant participated. Employer participated through account manager Ron Tardiff. Employer's Exhibit 1 was received.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time with some overtime as a security officer assigned at John Deere from October 22, 2010, and was separated from employment on March 15, 2016, when he was discharged. His last day of work was March 11, 2016. He had Army Reserve drill on March 5 and 6 so informed site supervisors Steve Ray and Nick Stufflebeam, and upper management of his drill schedule and that he would be unable to work that weekend. With the drill schedule, claimant is entitled to 24 hours off on each end. Ray changed the schedule so that claimant was to work on Friday, March 4, but did not notify him. Claimant did not receive an e-mail sent to all staff alerting them to check the E-Hub system to see if schedules had changed. (The employer did not offer a copy of this e-mail.) Schedule changes are usually relayed by telephone. When claimant returned from drill Ray had a disciplinary notice for his failure to work on March 4. When claimant checked E-Hub on March 7 he discovered Ray had scheduled him without a day off until March 23 when he normally had Sundays and Mondays off (that had changed from Tuesdays and Wednesdays off at the first of the month). The employer knew about claimant's drill obligations and had also agreed to work with his full-time college student schedule. Claimant considered the new schedule to be retaliatory and the result of understaffing, and entered into an e-mail conversation with management personnel indicating

his concern about the new scheduling arrangement. He asked that the historical agreement be followed and gave a conditional two-week resigntation notice if it were not resolved. Initially Stufflebeam told him the scheduling issues had been resolved. Then account manager Ron Tardiff declined to accept that resolution and accepted the resignation effective March 23. (Employer's Exhibit 1) Stufflebeam then suspended him for the remainder of his conditional notice period even though claimant indicated he had not resigned and requested to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit 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.

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).

Inasmuch as the claimant would suffer a substantial change in scheduled hours when compared to the historical arrangement given his Army Reserve drill obligation and college classes, and the schedule change was in retalitation for the drill schedule, the change is considered substantial. Thus, the separation was with good cause attributable to the employer.

Were the separation resolved as a discharge rather than voluntary quit, the employer has failed to establish misconduct and benefits would be allowed under that analysis as well.

DECISION:

The April 7, 2016, (reference 01) unemployment insurance decision is modified without change in effect. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs