

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAUL CAMPBELL
Claimant

ATLANTIC BOTTLING CO
Employer

APPEAL 15A-UI-05924-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/15
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:

The claimant filed an appeal from the May 14, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on June 17, 2015. Claimant participated. Employer participated through John Otterbeck and John Freeman.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a merchandiser from July 17, 2015, and was separated from employment on April 29, 2015, when he quit.

When the employer hired the claimant, the agreement was for claimant to make a weekly base pay and a commission. Under this pay structure, during the claimant's employment, he averaged \$734.00 per week. During the claimant's employment he also averaged 30 hours and 10 minutes of work per week. This averaged out to approximately \$24.47 per hour. The claimant's work week was Thursday through Sunday. On April 23, 2015, the employer informed the claimant that the pay structure for his position was going to change from the weekly base pay and a commission to \$18.00 per hour with no commission. April 26, 2015 was the last day the claimant worked. On April 29, 2015, the claimant informed the employer he was quitting because of the change to the pay structure. The claimant's pay structure was not changed because of any disciplinary warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant quit because of the change in the terms of hire. After being informed of the pay structure change, the claimant finished working that work week. Claimant quit work prior to starting the next scheduled work week, thus he did not acquiesce to the change in pay structure.

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).

Based on the figures provided by the employer, the claimant was earning approximately \$24.47 per hour under the weekly base pay plus commission (the pay structure he was hired under). With the new pay structure, the claimant would only be making \$18.00 per hour. This is approximately a 26 percent reduction in pay. The claimant's quit because of the change in contract of hire was with good cause attributable to the employer. Inasmuch as the claimant would suffer a reduction in pay, and employer has not established misconduct as a reason for the change in pay structure, 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 May 14, 2015, (reference 01) unemployment insurance 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css