

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY B FANCHER
Claimant

APPEAL NO: 13A-UI-09205-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

G M R I INC
Employer

OC: 06/23/13
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving
§ 17A.12-3 – Non-appearance of Party
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

G M R I, Inc. (employer) appealed a representative's July 29, 2013 decision (reference 01) that concluded Jeffrey B. Fancher (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 2:00 p.m. on September 23, 2013. The administrative law judge takes administrative notice of the Appeals Section's hearing conference call log report (APLT), which shows that the employer's representative received the hearing notice and responded by calling the Appeals Section on September 17; the employer's representative indicated that a manager Hutt would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Hutt was not available, nor was there any other authorized manager available; therefore, the employer/appellant did not participate in the hearing. The record was closed at 2:10 p.m. At 2:30 p.m., another manager, Tanya Nelson, called the Appeals Section, indicating that she had been authorized to participate in the hearing, and requested that the record be reopened. Based on a review of the available information 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:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The instructions inform the parties that they are to be available at the specified time for the hearing, and that if they cannot be reached at the time of the hearing at the number they provided, the judge may decide the case on the basis of other available evidence. The

employer failed to have an authorized person available at the scheduled day and time set for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The claimant started working for the employer on January 8, 2005. He had worked part time (30 – 35 hours per week). His last day of work was June 24, 2013. He voluntarily quit work as of that date. The reason he quit was because the employer had recently reduced his work to only working three days per week for about 20 hours per week. For the next schedule after June 24 the claimant was only scheduled for two days per week.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. *Id.* Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

An authorized person on behalf of the employer was not available for the September 23, 2013 hearing until after the record had been closed. Although the employer intended to participate in the hearing, the employer failed to read or follow the hearing notice instructions and did not have an authorized participant available at the scheduled time and day for the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

If the claimant voluntarily quit his employment, he 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).

The law presumes a claimant has voluntarily quit with good cause when he quits because of a substantial change in the contract of hire. 871 IAC 24.26(1). In *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in wage was, as a matter of law, a substantial change in the contract of hire. Based on the reasoning in *Dehmel*, a nearly 50 percent reduction in the claimant's hours and hence pay is substantial for purposes of unemployment insurance benefits.

"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*, supra; *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for reducing the claimant's hours and resulting wages, the change in the claimant's schedule and income which had been implemented was a substantial change in the claimant's contract of hire. *Dehmel*, supra. Benefits are allowed.

DECISION:

The representative's July 29, 2013 decision (reference 01) is affirmed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css