

**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**

**AMBER K SERVANTEZ  
APT #27  
4431 NW 86<sup>TH</sup> ST  
URBANDALE IA 50322**

**B-BOP'S INC  
939 OFFICE PARK RD #333  
WEST DES MOINES IA 50265**

**Appeal Number: 05A-UI-08834-DWT  
OC: 08/07/05 R: 02  
Claimant: Respondent (1)**

**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 Quit

STATEMENT OF THE CASE:

B-Bop's, Inc. (employer) appealed a representative's August 25, 2005 decision (reference 01) that concluded Amber K. Servantez (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 13, 2005. The claimant participated in the hearing. Robert Johnson, the owner, appeared on the employer's behalf. 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 her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on September 6, 2002. Since late 2002 or early 2003, the claimant worked as a full-time shift supervisor at various locations.

Prior to being transferred to the Windsor Heights location, the claimant worked at the employer's Urbandale location. When she worked in Urbandale, the claimant understood the manager allowed the claimant and others to take unscheduled smoke breaks during the course of a shift. At least some employees, however, complained to upper management and told the employer they would quit if the claimant did not start working with them to get work done instead of going outside to smoke. The employer transferred the claimant to the Windsor Heights' location in late April or early May 2005.

The Windsor Heights' location had a stronger management team and the employer believed with guidance the claimant could again be an effective shift supervisor. The claimant understood she could not take smoke breaks at the Windsor Heights' location as she had taken at the Urbandale location. The first time the Windsor Heights' manager let the claimant know her job was in jeopardy was in late July. The claimant understood the employer was not satisfied with the length of time it took employees to close when she was the shift manager. The manager told her that if she did not speed up the time it took to close, she could be discharged or asked to work as a "regular" employee.

After the claimant received this warning, she took steps to work harder with the other employees to get the closing done more quickly. The claimant thought she had made improvements. When she asked the manager if she was doing enough to speed up closings, he indicated there was some improvement.

After the manager talked to the claimant, the employer received information that the claimant was outside smoking during her shift when she should have been inside working and supervising employees. The employer then decided the claimant could only work as a regular employee. In addition to changing her work duties, the employer also reduced her wages from \$10.50 to \$8.00 an hour. On August 8, the employer explained the change in the claimant's employment. On August 9, 2005, the claimant declined the employer's offer of continued employment as a regular employee because of the changes in her wages and job duties.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause. Iowa Code §96.5-1. The claimant voluntarily quit her employment on August 9, 2005. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant leaves employment with good cause when she quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The employer asserted the

claimant could have been discharged, but instead the employer offered her continued employment as a “regular” employee. The employer’s offer of continued employment included demoting the claimant and reducing her wages from \$10.50 to \$8.00 an hour. In Wiese v. Iowa Department of Job Service, 389 N.W.2d 676 (Iowa 1986), the Iowa Supreme Court stated: “We believe that a good faith effort by an employer to continue to provide employment for his employees may be considered in examining whether contract changes are substantial and whether such changes are the cause of an employee quit attributable to the employer.”

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 hours was, as a matter of law, a substantial change in the contract of hire. Further, while citing Wiese with approval, the Court stated that:

It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer.... [G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith.

(Id. at 702.) Dehmel, the more recent case, is directly on point with this case. Therefore, the fact the pay reduction may have been due to circumstances beyond the employer’s control (the claimant’s failure to perform her shift job duties satisfactorily), under the reasoning of Dehmel, is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer.

The next issue is whether a 24 percent pay reduction is a substantial change in the contract of hire. The Court in Dehmel concluded a 25 percent to 35 percent pay reduction was substantial as a matter of law, citing cases from other jurisdictions that had held reductions ranging from 15 percent to 26 percent were substantial. Id. at 703. Based on the reasoning in Dehmel, a 24 percent reduction in pay is also substantial. The claimant had good cause to leave employment. The claimant is qualified to receive unemployment insurance benefits as of August 7, 2005.

DECISION:

The representative’s August 25, 2005 decision (reference 01) is affirmed. The claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. As of August 7, 2005, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer’s account may be charged for benefits paid to the claimant.

dlw/kjw