

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUE PEARCE**

Claimant

**APPEAL NO: 13A-UI-12067-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DIAMOND MEDICAL SPA AND VEIN**

Employer

**OC: 09/29/13**

**Claimant: Respondent (1)**

Iowa Code § 96.4-3 - Able and Available for Work

Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Diamond Medical Spa and Vein (employer) appealed an unemployment insurance decision dated October 14, 2013, reference 01, which held that Sue Pearce (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 30, 2013. The claimant participated in the hearing. The employer participated through Office Manager Angela Anderson, President Dr. LeRoy Yates, and Human Resources Consultant Trecie Bolton. Employer's Exhibits One through Ten and Claimant's Exhibits A through C were admitted into evidence.

**ISSUE:**

The issue is whether the claimant worked for the employer at the same hours and wages as in her original contract of hire and whether her voluntary separation was for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as an aesthetician from July 12, 2012 through November 14, 2013 when she voluntarily quit due to a change in the contract of hire. She was hired at \$18.50 per hour for up to 32 hours per week, although the written offer of employment actually states up to 30 hours per week. During the week of August 12, 2013, the claimant received a written proposal on a new rate of straight 15 percent commission on all products and services. She received a second proposal the week of August 19, 2013 for salary plus commission. She would receive \$9.00 per hour in base salary plus 5 percent of sales on CBI products and three percent commission on Eminence sales. There would be no pay for non-scheduled time in the office and she would receive 15 percent commission on self-referred new business.

The employer issued the claimant a written compensation annual review on August 19, 2013 confirming that impending changes in compensation was necessary in order to forestall

employee layoffs. The measures were attributed to persistent, extremely low production volumes within the esthetic/spa division of Diamond Medical Spa and Vein. As of September 1, 2013, the claimant's compensation would be 15 percent straight commission on all procedures and products sold with a guaranteed minimum of \$9.00 per hour for scheduled procedure appointments. The letter confirmed the claimant had a part-time position and was ineligible for paid time off. A subsequent letter was issued on August 21, 2013 which confirmed the same information but added that the entire remainder of the medical staff was being transitioned to some form of commission/productivity based pay incentives.

The claimant's paycheck from August 24, 2013 through September 6, 2013 was based on an hourly pay rate of \$18.50 but her paycheck from September 7, 2013 through September 20, 2013 was based on an hourly pay rate of \$9.00 per hour. The latter paycheck was issued on September 27, 2013 and it did not include any commission based wages. The claimant filed for partial unemployment benefits as of September 29, 2013.

The employer sent the claimant an email on November 11, 2013 confirming the payroll structure and indicating that her payroll would be adjusted to reflect the 15 percent commission rate for services. The employer also provided the claimant with a letter on that same date explaining that as of November 11, 2013, the claimant's office hours would now be 9:00 a.m. to 4:00 p.m. Office hours that did not involve direct client care would have to be spent in marketing to include following up emails and phone calls. The employer presented this to the claimant and signed the letter on November 12, 2013 but the claimant refused to sign it. She submitted her resignation after the following day indicating she quit due to the extreme change in pay structure, the failure to properly address her payroll concerns and her failure to receive accurate breakdowns of the pay she received. The employer testified that pay stubs were always provided to employees. The employer provided a copy of a check written to the claimant in the amount of \$1,429.45 to cover unpaid commissions but the claimant denied ever receiving this check.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the claimant was still working at the same hours and wages as in her original contract of hire. She was hired for full-time work but was advised by letter in August 2013 that she was a part-time employee. Her rate of pay was cut by more than half, even though she had the potential to earn more money by commission.

An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code § 96.19(38)(b). The claimant is deemed to have been partially unemployed from September 29, 2013 through November 9, 2013 and qualifies for benefits in that same time frame, provided she is otherwise eligible.

The next issue to be determined is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant quit on November 14, 2013 due to a change in the contract of hire. The law presumes a claimant has left employment with good cause when she quits because of a change in the contract of hire. 871 IAC 24.26(1). A "change in the contract of hire" means a substantial

change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.*

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The voluntary quit was with good cause attributable to the employer and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated October 14, 2013, reference 01, is affirmed. The claimant qualified for partial unemployment insurance benefits before she voluntarily quit her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/pjs