

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFREY A THOMPSON
Claimant

FEDERAL MOGUL
Employer

APPEAL 16R-UI-07490-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/01/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.25(27) – Quit Rather Than Perform Assigned Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 18, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit work. The parties were properly notified of the hearing. A telephone hearing was held on July 26, 2016. The claimant, Jeffrey A. Thompson, participated. The employer, Federal Mogul, participated through Darcie Reinhart, human resources representative; Steve Walenczak, shift supervisor; Becky Mellinger, human resources representative; and Ron Vorwerk. Employer's Exhibit 1 was received and admitted into the record without objection.

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 an employee from March 30, 2016, until this employment ended on May 3, 2016, when he resigned due to his pay rate.

The employer operates a manufacturing facility and its employees are unionized. Under the union agreement, each position within the plant has a different pay rate. When claimant began orientation on March 30, he was handed a pay sheet stating his initial pay rate would be \$13.37 per hour. On April 1, claimant was informed that he would be working shift nine and would be receiving a raise to \$14.86 per hour. Claimant accepted this position.

On or about April 28, claimant's supervisor told him that as of May 2, he would be moved to day shift for four weeks of training. Claimant testified that after training, he was being moved to shift ten (11:00 p.m. to 7:00 a.m.), though the employer denies it has a shift ten for claimant's position. Claimant asked if he would be taking a pay cut, and he was told there would not be a pay cut. Several hours later, the supervisor came back and informed him that he would be earning \$13.86 plus a 55 cent per hour shift differential.

When claimant reported to day shift, he asked Walenczak, the supervisor, to check on his pay rate. Walenczak gave him a pay sheet stating he would be making \$12.88 per hour on day

shift. The employer testified that claimant would earn the shift differential after his four weeks of training on first shift. At that point, claimant testified that he asked to talk to someone about the pay rate, but the employer denies this. Claimant submitted his resignation that day, in which he stated that he could not work for \$12.88.

The employer testified that during orientation, claimant was told that each job had a corresponding wage rate. The employer informs all new employees that its goal is to fill all open positions, and new employees are required to move around to different jobs based on the employer's need. Employees also learn about shift differentials during orientation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was without good cause attributable to the employer. Benefits are withheld.

Iowa Code § 96.5(1) provides:

Causes for disqualification.

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:

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.

Iowa Admin. Code r. 871-24.25(27) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The

following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

...

(27) The claimant left rather than perform the assigned work as instructed.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's witnesses more credible. Specifically, the administrative law judge believes claimant was told when his employment began that he would move positions in accordance with company needs and that his pay rate would fluctuate depending on his position.

An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. ____/____-____, Iowa Ct. App. filed ____, 1986). In this case, claimant was moved to a first-shift position for four weeks of training. While the pay was lower than his previous position with the employer, the reduction in pay was not substantial enough to change the terms of his contract for hire. Claimant was notified that this was a possibility when he accepted his position with the employer. Claimant's decision to quit because he did not like the pay rate he would receive while in training was not for a good cause reason attributable to the employer. Benefits are withheld.

DECISION:

The May 18, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

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