IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JANNA R COX
Claimant

ABCM CORPORATION
Employer

APPEAL NO: 14A-UI-12925-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/23/14
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

ABCM Corporation (employer) appealed a representative's December 9, 2014 decision (reference 01) that concluded Janna R. Cox (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 14, 2015. The claimant participated in the hearing and was represented by Hattie Holmes, paralegal. Connie Ayers appeared on the employer's behalf and presented testimony from one other witness, Sharon Quail. During the hearing, Employer's Exhibit One and Claimant's Exhibit A were entered into evidence. 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 for a good cause attributable to the employer?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 16, 2012. She had worked full time (32 or more hours per week) as an LPN/charge nurse and direct caregiver on the first shift in the employer's Aplington, Iowa facility. Her last day of work was November 18, 2014. She voluntarily quit work as of that date, having given written notice on November 4. Her reason for quitting was that the employer had reduced her hours to about 20 to 25 hours per week; the employer was willing to provide the claimant additional hours to bring her back up to 32 or more hours per week, but only if she was willing to work shifts on the second shift, which she was not able to do. The employer had reduced her hours because of a report from another employee that the claimant had said that she was going to sabotage the employer's new care delivery procedures by working more slowly. However, the claimant denied saying anything to that effect, or even having negative sentiments toward the new procedures. Because the employer

accepted the hearsay report as true, it took the claimant off direct caregiving work and reduced her work hours. As a result in the reduction of hours, the claimant quit the employment.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she 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. Rule 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).

"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 v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for choosing to accept the hearsay report as true and therefore reducing her hours, and consequently her pay, the change in the claimant's hours and pay which had been implemented was a substantial change in the claimant's contract of hire. *Dehmel*, supra. The administrative law judge notes, however, that the employer relies exclusively on the at least second-hand account from this other employee; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether that employee might have been mistaken, whether she actually observed the entire time, whether she is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of her report. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact made statements indicating an intent to sabotage the employer's new care delivery program. Benefits are allowed.

DECISION:

The representative's December 9, 2014 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 she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs