IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JEREMIAH M MAXWELL
Claimant

CROSSROADS SERVICES GROUP INC
Employer

APPEAL NO. 06A-UI-10678-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/01/06 R: 04
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 26, 2006, reference 01, that concluded the claimant voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on November 20, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. George Lozoya participated in the hearing on behalf of the employer with a witness, Jamie Singleton.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer from July 1, 2005, to October 3, 2006. Up until October 2, the claimant worked as a supervisor of a lumper crew responsible for unloading freight for Family Dollar stores. He was paid a salary of $400.00 per week plus a commission for the loads he handled.

Before the claimant reported to work on October 2, management made the decision to remove him from his position as supervisor and offer him a non-supervisory job as a freight handler, which would involve a substantial reduction in his pay and work responsibilities. The employer was dissatisfied with the claimant's work performance as a supervisor.

The claimant initially accepted the job as a freight handler, which meant he would be paid only by the load. When he reported to work on October 3, 2006, he discovered that there was no truck available for him to unload. Since his pay was determined by the number of trucks he unloaded, he decided the demotion was not acceptable and left. He quit employment due to the substantial change in his job.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code section 96.5-1.

871 IAC 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:
>
> (1) 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.

The question is whether the changes in the claimant's rate of pay and job duties provided good cause attributable to the employer to leave employment. Although the rule refers to the "contract of hire," good cause for leaving is not restricted to individuals with written contracts or only to changes to the "hiring agreement." The unemployment insurance rules do not set forth the only "good causes" that qualify an individual for unemployment insurance in quit cases, because the statute is the ultimate law governing a claimant receiving benefits. Substantial changes in the terms and conditions of employment made by an employer also constitute good cause attributable to the employer to leave employment.

Are the cut in pay and changes in job duties in this case substantial changes in the terms and conditions of employment? 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 (citing cases from other jurisdictions that had held reductions ranging from 19 percent to 26 percent were substantial). Id. at 703. Based on the reasoning in Dehmel, the elimination of his salary and the changes in the job duties would also be substantial.

The next question is whether the fact that the demotion was for discipline prevents the substantial change in the terms of employment from being good cause attributable to the employer. The Court in Dehmel 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 be free from all negligence or wrongdoing in connection therewith.

Therefore, under the reasoning of Dehmel, the fact that the pay reduction and change in job duties was for disciplinary reasons is immaterial in deciding whether the claimant left employment with good cause attributable to the employer. Furthermore, if the fault of the claimant is to be considered in deciding whether a claimant quits with cause in case involving a substantial change in the terms of employment, what level of fault is required? Does the result change depending on whether the pay cut was due to the employer's determination that the claimant's job performance was unsatisfactory, inefficient, negligent, or willful misconduct? In

my judgment, the focus should be on whether the change was substantial rather than assessing the justification for the change, which is consistent with the reasoning in Dehmel.

In the alternative, only a demotion due to work-connect misconduct should be considered when evaluating good cause for quitting due to a disciplinary cut in pay and job duties. Based on the evidence, the claimant's one-time error in judgment would not meet the standard of willful and substantial work-connected misconduct found in 871 IAC 24.32(1).

Prior to the recent Supreme Court decision in Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005), this case would have been governed my understanding of the precedent established by the Iowa Supreme Court in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993), which established two conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions or a substantial change in the contract of hire. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that he intends to quit if the condition is not corrected. If this reasoning were applied in this case, the claimant would be ineligible because he failed to notify the employer of her intend to quit if the intolerable working conditions and the substantial change in the employment contract were not corrected.

In Hy-Vee Inc., however, the Iowa Supreme Court ruled that the conditions established in Cobb do not apply when a claimant quits due to intolerable or detrimental working conditions by reasoning that the Cobb case involved "a work-related health quit." Hy-Vee Inc., 710 N.W.2d at 5. This is despite the Cobb court's own characterization of the legal issue in Cobb. "At issue in the present case are Iowa Administrative Code Sections 345-4.26(1) (change in contract for hire) and (4) (where claimant left due to intolerable or detrimental working conditions)." Cobb, 506 N.W.2d at 448.

In any event, the court in Hy-Vee Inc. expressly ruled, "notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions." Hy-Vee Inc., 710 N.W.2d at 5. The court also overruled the holding of Swanson v. Employment Appeal Board, 554 N.W.2d 294, 297 (Iowa Ct. App. 1996), that a claimant who quits due to unsafe working conditions must provide notice of intent to quit. Hy-Vee Inc., 710 N.W.2d at 6. Based on the Hy-Vee Inc. reasoning, notice to quit unless conditions are remedied would also not be required when a claimant quits due to a substantial change in the terms and conditions of employment.

The court in Hy-Vee Inc. states *what is not required* when a claimant leaves work due to intolerable working conditions but provides no guidance as to *what is required*. The issue then is whether claimants when faced with substantial changes in the terms and conditions of employment are required to say or do anything before it can be said that they voluntarily quit employment with "good cause attributable to the employer," which is the statutory standard. Logically, a claimant should be required to take the reasonable step of notifying management about the unacceptable condition or change. The employer's failure to take effective action to remedy the situation then makes the good cause for quitting "attributable to the employer." In addition, the claimant should be given the ability to show that management was independently aware of the substantial change in the employment agreement to establish good cause attributable to the employer for quitting.

Applying these standards, the claimant has demonstrated good cause attributable to the employer for leaving employment. The employer demoted the claimant and knew that the change in his pay and job duties was substantial.

DECISION:

The unemployment insurance decision dated October 26, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw