

**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**

**NATHAN J SMITH  
723 SW 4<sup>TH</sup> ST  
STUART IA 50250**

**TRI CITY ELECTRIC CO OF IOWA  
415 PERRY ST  
DAVENPORT IA 52801**

**Appeal Number: 05A-UI-11581-SWT  
OC: 08/28/05 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:

The employer appealed an unemployment insurance decision dated October 31, 2005, reference 01, that concluded the claimant voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on December 6, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Sherry Rodriguez participated in the hearing on behalf of the employer with a witness, Douglas Palmer. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as an electrician in Ames, Iowa, from September 14, 2005, to October 7, 2005. When the claimant was hired, he insisted that he be paid \$29.83 per hour, which is the union pay scale for electricians in Des Moines, rather than the \$20.00 per hour, which is the pay scale for electricians in Ames. The president of the

company, Douglas Palmer, agreed to the \$29.83 per hour but told the claimant that he should not tell other employees what he was being paid.

It became common knowledge on the job site that the claimant was being paid Des Moines scale wages, and this upset some workers who were paid less. The claimant never volunteered information about his rate of pay, but workers asked the claimant about whether he was being paid Des Moines scale. Initially, the claimant did not respond but in early October 2005, when an employee told him that he knew that the claimant would not work for the Ames wage scale, the claimant admitted he was getting the Des Moines wage scale.

Employees complained to Palmer about the differences in what employees were being pay. Palmer considered the claimant to have violated the agreement made when the claimant was hired. The claimant was informed that his pay was being reduced to the Ames wage scale as a result of disclosing his pay rate. The claimant told Palmer that he would have to quit if the employer reduced his pay. Palmer, however, remained firm regarding reducing the claimant pay so the claimant quit working for the employer.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

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 division of job service.

871 IAC 24.26(1) provides:

Voluntary quit without 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.

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. 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 be free from all negligence or wrongdoing in connection therewith.

(Id at 702.)

The next issue is whether a 32 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 19 percent to 26 percent were substantial. Id. at 703. Based on the reasoning in Dehmel, a 32 percent reduction in pay is also substantial, and the claimant had good cause to leave employment. The claimant has also satisfied the requirements of Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The Iowa Supreme Court has ruled that in order to qualify for unemployment insurance benefits, an employee must take the reasonable step of informing his employer that the change in the contract of hire was unacceptable so the employer has the opportunity to correct those conditions before an employee takes the drastic step of quitting employment. Id. at 448.

The claimant did not volunteer information about his rate of pay and only admitted to something the employee already knew. The evidence does not establish grounds for making a substantial reduction in the claimant's pay. Good cause for leaving employment has been shown.

DECISION:

The unemployment insurance decision dated October 31, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/tjc