

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRYAN L REAR**  
Claimant

**APTS DOWNTOWN INC**  
Employer

**APPEAL 18A-UI-10335-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/09/18**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the October 5, 2018 (reference 02) unemployment insurance decision that held claimant was not eligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 30, 2018. Claimant, Bryan L. Rear, participated personally and was represented by attorney Jeff Clements. Employer, Apts Downtown Inc., participated through witness Bryan Clark.

**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 a maintenance worker from January 6, 2018 through August 31, 2018, when he voluntarily quit. Claimant's rate of pay when hired was \$15.00 per hour. Claimant's working hours were Monday through Friday each week from 8:00 a.m. to 5:00 p.m. Claimant also worked on-call one night per week. There were days when claimant would be sent home early due to lack of work. Claimant's job duties involved him completing maintenance repairs at an apartment complex. Mr. Clark was claimant's immediate supervisor.

There was a rainstorm on August 28, 2018, which resulted in many residents calling claimant (who was the on-call worker) regarding water in their apartment units. Claimant inquired with each resident whether the situation needed immediate attention that night or if it could wait until the next morning. All residents told claimant it could wait until the morning to work on the problem.

Mr. Clark believed that the claimant should have responded immediately to the tenants that night while on call. On August 30, 2018, Mr. Clark and claimant verbally argued with each other about claimant failing to attend to the tenants the night he was on call. Mr. Clark did not

discipline claimant for his actions on August 28, 2018. Mr. Clark told claimant that, "he was worth \$8.50 per hour" and left. Claimant attempted to continue speaking to Mr. Clark about the issue but Mr. Clark refused to speak with claimant. Claimant left his work shift early on August 30, 2018.

Claimant reported to work on August 31, 2018 to attempt to discuss the August 28, 2018 incident with Mr. Clark. However, when claimant received his paycheck on August 31, 2018 he was only paid \$8.50 per hour for the pay period of August 15, 2018 through August 28, 2018. Claimant told the secretary that he could not work for \$8.50 per hour and left. Claimant did not return to work.

Claimant did not receive any discipline during the course of his employment. The employer does not have a written disciplinary policy.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code §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 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:

(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 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.

However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. The Iowa Supreme Court concluded that because

the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Although claimant was not required by law to give the employer notice of his intent to quit, he did so when he attempted to speak with Mr. Clark on August 30, 2018; however, Mr. Clark refused to speak to him. Instead, Mr. Clark reduced claimant's pay by more than 43% effective August 15, 2018. The employer's willful breach of the original terms of hire is clearly substantial. Thus, claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The October 5, 2018 (reference 02) unemployment insurance decision is reversed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs