IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CAMILLE K MCNEAL Claimant **GASTROINTESTINAL CLINIC OF QC** Employer	**APPEAL NO. 14A-UI-05532-SWT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/27/14** **Claimant: Respondent (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 19, 2014, reference 01, that concluded the claimant voluntarily quit employment with good-cause attributable to the employer. A telephone hearing was held on June 19, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Dawn Hubert participated in the hearing on behalf of the employer.

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 as a certified medical assistant from January 6, 2014 to March 26, 2014. Her job was to work as an assistant to a gastroenterologist at a rate of pay of $13.75 per hour.

The claimant voluntarily quit her employment on March 26, 2014 after the employer demoted her to an entry level rooming position and reduced her pay to $13 per hour. The employer demoted her because she did not seem to have the lab skills for the position and asked the same questions several times.

The claimant did not provide notice that she was quitting, but the employer intended to carry out the pay cut and demotion as of the next pay period.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good-cause attributable to the employer. Iowa Code § 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.

Before the 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 in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The Cobb case 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 she intends to quit if the condition is not corrected. If this reasoning were applied in this case, the claimant would be ineligible because she failed to notify the employer of her intent 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 contract of hire under 871 IAC 24.26(1).

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 working conditions that they consider intolerable or a change in the contract of hire that they consider substantial 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 a condition that is objectively intolerable or was a willful breach of the contract of hire 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. I conclude the demotion and pay cut was substantial. Furthermore, I conclude the pay cut and demotion were definitely going to occur and a complaint by the claimant would not have changed what the employer was going to do.

Finally, the Iowa Supreme Court in Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988) 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, the fact that the pay reduction was due to issues with the claimant's qualifications, under the reasoning of Dehmel, is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated May 19, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

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