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

JULIE A LEHMAN
PO BOX 352
NEW HAMPTON IA 50659

D J FOOD & DRUG INC
LIDDLE'S SUPER VALU
PO BOX 488
NEW HAMPTON IA 50659

Appeal Number: 04A-UI-02789-DT
OC: 02/08/04 R: 03
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, 4th 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.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

D J Food & Drug, Inc. (employer) appealed a representative's March 3, 2004 decision (reference 02) that concluded Julie A. Lehman (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 April 5, 2004. The claimant participated in the hearing and presented testimony from one other witness, Deb Flick. Jim Durbin appeared on the employer's behalf. One other witness, Dona Durbin, was available on behalf of the employer but did not testify. 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?

FINDINGS OF FACT:

The claimant had worked for the prior owner of the retail grocery store, and started working for the employer on June 27, 2001. She worked full time as a bookkeeper/checker. Her last day of work was February 6, 2004. She submitted her notice of resignation effective that date on January 23, 2004.

On January 21, 2004, the employer met with the claimant and informed her that due to declining sales, the employer was going to ask that the claimant work two Tuesdays and two Thursdays until 7:00 p.m., or every other weekend, each month. In the alternative, she could go to part-time status. The change in the scheduling would have gone into effect in February. While the employer generally followed a set of policies from the prior owner that indicated that employees' schedules could vary, the claimant's normal work pattern for the duration of her employment had been to work no later than 5:15 p.m., Monday through Friday. Since beginning working for the employer, she had worked only two Saturdays by special arrangement, one in October 2001, and one in June 2002. The claimant determined that her personal responsibilities would not allow her to work either the evenings or the weekends, and she could not afford to work part-time without full time benefits. Therefore, she verbally informed the employer of her decision on January 22 and put it into writing on January 23.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit for 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 department.

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.

"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). 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, nor is it pertinent that the claimant

remained an "at will" employee. The long-established and implicit terms of the claimant's employment with the employer were that she would not need to work nights or weekends. The change in the claimant's work hours that was to have been implemented was a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits are allowed.

DECISION:

The representative's March 3, 2004 decision (reference 02) 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.

ld/kjf