

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT L WOOD
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 17A-UI-08947-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/06/17
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the August 24, 2017 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 21, 2017. Claimant, Robert L. Wood, participated personally. Employer, Team Staffing Solutions Inc., participated through witness Sarah Fiedler. The administrative law judge took official notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Employer is a temporary employment firm. Claimant was employed full-time as a temporary employee. He accepted a position and was placed at Hoffman Construction ("Hoffman") as a welder. Mary Kirschner was the representative who discussed with claimant his job duties that he would be performing for Hoffman. She told claimant that he would be welding on a job out of town in Missouri for two weeks. Claimant was told by Ms. Kirschner that the employer would pay for claimant's lodging and travel while on this two-week assignment as a welder. Claimant took several welding tests for Hoffman and passed each test.

When claimant arrived to his first day of work on August 2, 2016, he was instructed that he would not be welding because the company could not insure temporary employees as welders. Instead, claimant would be washing trucks and cleaning carpets in the trucks.

At the end of claimant's first day, he told Hoffman that he was not going to return to work in this position because it was not as a welder, which is what he had been told it would be. Claimant then telephoned the employer and left a message for Ms. Kirschner that he was quitting because the job duties did not include welding but instead were washing trucks.

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.

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(23) 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:

- (23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

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. Our 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, the change to the terms of hire must be substantial in order to allow benefits. In this case, the claimant's job duties were changed from welding to washing trucks and shampooing carpets. This is a substantial change and drastic modification in the type of work. This change of the original terms of hire is substantial. Thus, the separation was with good cause attributable to the employer. Benefits are allowed. Because benefits are allowed, the issues of overpayment and chargeability are moot.

DECISION:

The August 24, 2017 (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account may be charged for benefits paid.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs