

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

NANCY TWINING

Claimant,

and

CD MANAGEMENT LTD

Employer.

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HEARING NUMBER: 13B-UI-10845

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1, 96.3-7

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Nancy Twining, worked for CD Management, Ltd. from August 6, 2012 through August 29, 2013 as a full-time contract employee, i.e., salesperson/show manager. (24:13-23:42; 15:46-15:30) The contract was for one year with a guarantee of \$40,000 plus commission, which would expire on August 6, 2013. (23:20-23:14, 5:52-5:45; Exhibit 1) Ms. Twining signed in acknowledgement of receipt of this agreement on the day she was hired. (21:46-21:44; 14:50) Both parties verbally agreed that the Employer would pay the Claimant's first 6 months of medical and dental insurance. However, as the year progressed, the Employer 'forgot' the agreement, and ended up paying for the entire years' worth of insurance. (20:34-19:30; 5:25-5:08) Ms. Twining earned \$40,848.20 for that year. (17:52-17:40)

When Ms. Twining's contract expired the following year, the Employer spoke with the Claimant indicating that they wanted to continue her employment with a change in her contract. (21:35-21:10:18:48) The new contract would not include the \$40,000 guaranteed salary as did her prior contract. (21:09-20:48) The Employer removed the guarantee because she believed the Claimant "...could make it anyway..." and she

was no longer new to the business. (17:35-17:25; 17:16-16:58) In addition, the new contract would require Ms. Twining to pay for her own medical and dental insurance. (20:51-20:37) The Claimant was never given a new contract to sign (11:02-10:42); nor was any formal contract drawn up.

The Claimant indicated that she needed to consult her husband and would get back to the Employer. (18:57-18:40) When the Claimant got back with the Employer after discussing the new terms with her husband, she informed the Employer that she would have to look for another job to supplement her income because she couldn't afford to pay the insurance premiums. (18:28-18:2011:25-11:14) The Employer then released her from her duties on August 29, 2013 since she was looking for another job. (18:15-18:08; 12:39-11:10; 7:49-7:40; 3:23) The Employer agreed that the Claimant committed no misconduct. (3:00-2:44; 2:10-1:56)

REASONING AND CONCLUSIONS OF LAW:

Both parties disagree as to the nature of the Claimant's separation. On the one hand, Ms. Twining testified that she was 'let go' or 'released' from her duties, which implies that she was discharged for which misconduct must be established. See, Iowa Code Section 96.5(2)(a) (2013); 871 IAC 24.32(1)"a" and 871 IAC 24.32(1)"d" The Employer, however, denies that the Claimant was released for any reasons that could be attributable misconduct, which we agree. (3:00-2:44; 2:10-1:56) So, if this were a separation characterized as a discharge, then the Claimant would **not** be disqualified as simply stating that she would have to look for additional employment does not come under legal definition of misconduct.

As for a quit, which the Employer seems to imply, "[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." FDL Foods, Inc. v. Employment Appeal Board, 460 N.W.2d 885, 887 (Iowa App. 1990), accord Peck v. Employment Appeal Board, 492 N.W.2d 438 (Iowa App. 1992). The record lacks any evidence to establish that Ms. Twining had any intention of severing her employment relationship until she was faced with a new contract that contained terms that were significantly different from her original contract of hire. (21:35-21:10:18:48) If her separation was considered a quit, then she would be qualified based on a change in her contract of hire since the Employer took away her guaranteed salary status, as well as the requirement that she pay insurance premiums. A reduction in the claimant's working hours by 25-35% is deemed substantial. Thus, a claimant's quit as a result of said reduction is considered to be with good cause attributable to the employer regardless if the reduction was due to economic conditions beyond the employer's control. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). The Claimant reasonably anticipated that these changes would have a significant impact on her financial status that she would have to obtain additional employment just to pay the premiums. Thus, a quit under these circumstances would have been with good cause attributable to the Employer and Ms. Twining would have also qualified under this scenario.

What is also clear is that here we see is the existence of a one-year contract for which both parties agreed to the terms beginning August 6, 2012 and expiring one year later. (23:20-23:14, 5:52-5:45; Exhibit 1) The Claimant performed her duties under those terms until her contract expired and she was approached by the Employer with a new contract whose terms differed from the previous contract. Under this scenario, the law provides:

871 IAC 24.26 (22), in relevant part:

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:

The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed...

In addition, 871 IAC 24.26 (19) 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:

The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. *An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment.* The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work...*(Emphasis added.)*

Based on this record, Ms. Twining's separation was the result of the operation of the contract and is not the result of a quit even though she was offered another contract. The issue of whether she refused a suitable offer of work must be adjudicated.

DECISION:

The administrative law judge's decision dated October 17, 2013 is **REVERSED**. The Employment Appeal Board concludes that the claimant separated due to the expiration of her contract, and is therefore entitled to unemployment benefits provided she is otherwise eligible.

The Board would also remand this matter to the Iowa Workforce Development Center, Claims Section, for a determination of the job refusal issue.

John A. Peno

Monique F. Kuester