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

Appeal Number: 04A-UI-08396-LT
OC: 07-11-04 R: 02
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.

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_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Employer filed a timely appeal from the July 30, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 25, 2004. Claimant did participate and was represented by Patricia Mullen-Hulting, Attorney at Law. Employer did participate through Michael Lanser, Carla Lanser, Dean Wood and Vicky Evans. Employer's Exhibits One and Two were received. Claimant's Exhibit A and B were received. Julie Gutierez participated on September 21, 2004 in addition to all previous witnesses.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time counter top installer for three years through July 12, 2004 when he

quit. Claimant had just returned from four days of vacation over the 4th of July weekend. Claimant had notified claimant of his intent to take those days off two months in advance. Employer, Michael Lanser, said he was going to at least temporarily reduce his pay from $15.00 to $14.00 per hour because he was missing too much work and because of job performance. Employer had not previously warned claimant that he may be fired or have his wages reduced for attendance, work performance or "attitude" because employer was afraid he would quit while employer was still recovering from surgery. The reduction would result in a $2,000.00 loss of wages per year. Claimant was entitled to 144 hours of vacation and sick leave during the last year for which he gave advance notice.

On July 12 employer told claimant to watch his cell phone usage but it was "not a major issue" or going to result in discharge. Claimant took up to 40 measurements per week. There were two customer complaints a year ago or more and one more recent complaint about measuring.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with 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.

In general, a substantial pay reduction or 25 to 35 percent reduction of working hours creates good cause attributable to the employer for a resignation. Dehmel v. EAB, 433 N.W.2d 700 (Iowa 1988).

If an employer expects an employee to conform to certain expectations or face disciplinary wage reduction, appropriate (preferably written) and reasonable notice should be given. Inasmuch as the claimant would suffer up to a $2,000.00 reduction in pay per year and he was not warned in advance about the conduct for which employer reduced the wages, the change of the original terms of hire is considered substantial. Furthermore, taking accumulated vacation with advance notice and approval is not considered excessive unexcused absenteeism or misconduct that would warrant a reduction of wages. Thus the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The July 30, 2004, reference 01, decision is affirmed. The claimant voluntarily left employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

dml/kjf