

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MARK A WHITE

Claimant

APPEAL NO: 18A-UI-08441-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CONNIE COPPER-RENDER REVOCABLE
TRUST**

Employer

OC: 05/20/18

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 § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the July 25, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 29, 2018. The claimant participated personally. The employer participated through Connie Copper-Render, owner. Employer witnesses also included Derek Render, Samantha Neipert and Max Ramsey. Stacey High was listed as a witness but unavailable when called and did not respond to a voicemail directing her to call the Appeals Bureau to participate. Employer Exhibits 1-12 were admitted over objection. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct or did the claimant voluntarily quit the employment with good cause attributable to the employer?

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: The claimant was employed part-time as a property management/bookkeeping/maintenance and was separated from employment on May 22, 2018, when he quit the employment without notice. Continuing work was available. Prior to separation, the claimant had no warnings or disciplinary action, and his job was not in jeopardy.

When the claimant began employment in 2015, he was not given a description of his job duties or a set schedule, but the undisputed evidence is he performed general bookkeeping, collected rents for the employer rental property, and performed maintenance as needed. The claimant each month would submit a billing or invoice to be paid by the employer. Until September 2017, the claimant estimated he worked 90-100 hours per month.

In September 2017, the employer reduced the claimant's hours to 30-35 a month, which the claimant reluctantly agreed to work. For approximately two years until May 2018, Ms. Copper-Render also rented a bedroom the claimant's apartment as the employer "office space". She paid him \$250.00-\$275.00 per month for the space, had a key to access the office/bedroom, and would come and go as needed to tend to business matters. Due to selling the building containing the apartment, Ms. Copper-Render relocated the office to a new building, across town, just before the claimant quit. This building would also be her residence. As a result, the claimant would no longer receive rent money for the office space.

Then on May 22, 2018, the employer, through Ms. Copper-Render, sent the following text messages to the claimant:

Mark, because I'm going to be building a spec house I'm going to be cutting back your hours even more. I don't know any other way to make enough money in the account to pay interest payments. I'm going to bring Tagan in to help me on the computer software. We will be using the job sheet.ao we know what need is ti be dobe on. A weekly basis. U may have to fill out a time card

If this does not work for you I understand

If you want to pick up some of the worj (sp) orders that would be fine. Deck need to be painted ect (sp) (See fact-finding documents/administrative record)

The claimant and Ms. Copper-Render then exchanged text messages in which he expressed his anger with the sudden change, and Ms. Copper-Render reiterated that she needed to cut expenses and downsize (See fact-finding documents/administrative record).

The claimant was told he was allowed to keep maintenance work. Neither Ms. Copper-Render nor the claimant knew what percentage of his job duties would include maintenance work, but the claimant estimated it would be only a couple of hours a week. The claimant determined that Ms. Copper-Render was removing his job duties related to the bookkeeping and property management based upon her texts and the fact he had not been given keys to the new office space, further indicating she did not intend to have him perform work in the office anymore. He quit in response to the unexpected change of job duties.

Immediately after he quit, he called Ms. Copper-Render's son, Derek Render, stating he could no longer work for her, and also notified at least one tenant, including Mr. Ramsey, that Ms. Copper-Render was a "bitch." In the retrieval of the office furniture and computer, the employer discovered discrepancies and concerns related to the execution of the claimant's job duties (Employer Exhibits 1-12). However, the employer was unaware of these issues prior to separation.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$802.00, since filing a claim with an effective date of May 20, 2018. The administrative record also establishes that the employer did participate in the July 25, 2018 fact-finding interview or make a witness with direct knowledge available for rebuttal. Connie Copper-Render participated.

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. Benefits are allowed, provided he is otherwise eligible.

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.

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:

24.26(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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record establishes claimant has met his burden of proof to establish he quit for good cause reasons within Iowa law.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. ___/___, Iowa Ct. App. filed ___, 1986). The credible evidence presented is that on May 22, 2018, Ms. Copper-Render informed the claimant she would be reducing his job duties to downsize and cut costs (See fact-finding documents/administrative record). There was no disciplinary or established misconduct as the reason for the effective demotion.

As a result of the reduction in hours, the claimant's bookkeeping and property management duties were also eliminated, resulting in only occasional maintenance duties. The claimant estimated that as a result of the changes, he would only be working one to two hours a week rather than seven or eight per week (based on 30-35 hours per month of work performed.) The administrative law judge is persuaded that based on the text messages of Ms. Copper-Render

to the claimant, coupled with her decision to move the office space and not give him access, that the claimant reasonably inferred the change was intended to be permanent and to eliminate his duties related to office matters such as the bookkeeping and property management. As a result, the claimant's hours would have been reduced over 50 percent. 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).

Inasmuch as the claimant would suffer an indefinite demotion by loss of most job duties, combined with over a 50% reduction in hours, and the employer has not established misconduct as a reason for the effective demotion, the change of the original terms of hire is considered substantial. While the employer is certainly entitled to make personnel decisions based upon its needs, that need does not necessarily relieve it from potential liability for unemployment insurance benefit payments. Since the claimant's hours were reduced and he was demoted because of a business decision, the separation was with good cause attributable to the employer. Benefits are allowed.

Information discovered after the claimant's separation (Employer Exhibits 1-12) was not relevant because it was discovered after the separation and after the claimant initiated separation. Inasmuch as the reason for the reduction for hours was reducing business expenses and not disciplinary in nature, it was not applicable in determining whether the claimant's separation was disqualifying.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The July 25, 2018, (reference 01) initial decision is affirmed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn