IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CRYSTAL L ROSS Claimant **TACO JOHNS OF IOWA INC** Employer	**APPEAL 16A-UI-04646-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/20/16** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 19, 2016 (reference 04) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on May 3, 2016. The claimant, Crystal L. Ross, participated personally. The employer, Taco Johns of Iowa, Inc., participated through Restaurant Business Coach Zach Rupe and General Restaurant Manager Kate Anele. Employer's Exhibits One and Two were admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as Shift Leader and Supervisor. She was employed from June 6, 2015 until November 24, 2015. Claimant's job duties included managing employees and customer service in the fast-food restaurant. Claimant lives in Oskaloosa and began working at the Oskaloosa store. Ms. Anele was claimant's supervisor at that store. During the course of her employment the claimant and Ms. Anele had conflicts and were not working well together. See Exhibit One and Two.

At the end of October of 2015 Mr. Rupe spoke to claimant and told her that she could not go back to the Oskaloosa store because of the personality conflict between her and Ms. Anele. Mr. Rupe told claimant that her only option was to transfer to the Pella store or the Ottumwa store. The Pella store was approximately 18 minutes from claimant's residence and the Ottumwa store was approximately 45 minutes from claimant's residence. Claimant was upset that she was being transferred to another store. She told Mr. Rupe that if she had to choose between the two stores she would choose the Pella store because the location was closer to her

residence. She had this discussion with Mr. Rupe on November 13, 2016. Claimant verified with Mr. Rupe that she would still have the same position, same pay, and same hours when she transferred to the Pella store. He confirmed that was correct. Had claimant not have agreed to transfer she would have been discharged from employment.

Claimant contacted the Pella restaurant manager, Jess Adams, and she learned that she was only schedule to work a couple of days that following week. Claimant had been working from 36 to 45 hours per week at the Oskaloosa store. Ms. Adams told claimant that she would schedule her in where she could but that she had several other supervisors at that location and since she was new to the store she would have lower priority in scheduling hours due to seniority. Claimant discussed with Ms. Adams that she was promised to work full-time hours when she accepted the transfer from Mr. Rupe. Ms. Adams replied that Mr. Rupe didn't have authority to tell her what schedule to make and who to assign hours to.

At the Oskaloosa store claimant received $819.28 for two weeks of pay for the pay period ending August 27, 2015; $791.64 for the pay period ending September 10, 2015; and $454.89 for the pay period ending November 19, 2015. During her work at the Pella store claimant received $111.00 for the pay period ending December 3, 2015 and $47.00 for the pay period ending December 17, 2015. Claimant was told she would only average 15 to 20 hours per week at the Pella store.

There were dates that claimant was sick during the time she was scheduled at the Pella store and did not report to work. Those dates included November 21, 2015 for four hours; November 22, 2015 for seven hours; November 25, 2015 for nine hours and November 27, 2015 for six hours. The total amount of time the claimant could have worked this week but did not was 26 hours. According to claimant's last paycheck she would have worked five or six hours on November 24, 2015. The previous week claimant was schedule one or two days for three or four hours each day. Claimant tendered her resignation on November 27, 2015, due to the fact that she was not receiving enough hours and pay to be able to meet her financial obligations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was a voluntary quit with good cause attributable to the employer. Benefits are allowed.

Claimant was not discharged from employment. Claimant voluntarily quit. As such, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Each case must turn around its own facts. *Wolfe v. IUCC*, 232 Iowa 1254, 7 N.W.2d 799 (Iowa 1943).

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(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.

A substantial pay reduction can give an employee good cause for quitting. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 703 (Iowa 1988)(finding that a reduction in weekly hours by twenty-five to thirty-five percent were substantial). There is "no talismanic percentage figure to separate a reduction that is substantial from one that is not." *Id*. (citing *Ship Inn, Inc. v. Commonwealth*, 50 Pa.Cmwlth. 292, 412 A.2d 913, 915 (1980)).

There is no doubt that claimant would have been discharged from employment if she would not have accepted a transfer to either the Pella store or the Ottumwa store. The new location in Pella was approximately a 36 mile difference in driving time for her to commute to work. While claimant did have the same job title and job pay, she did not receive the same hours and was not assigned the same job duties as she was previously accustomed to at the Oskaloosa store. Claimant's reduction in hours from 36 to 45 hours per week in the Oskaloosa store to between 8 and 31 hours per week in the Pella store is a substantial pay reduction.

The claimant has met her burden in proving that her decision to voluntarily quit her employment was with good cause attributable to the employer. As such, benefits are allowed.

DECISION:

The April 19, 2016 (reference 04) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

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Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

db/can