IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GUADALUPE MARTINEZ
Claimant

COMBINED CANDY & SNACKS LLC
SHAKESPEARE'S
Employer

APPEAL NO: 06A-UI-08803-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/30/06 R: 04
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Combined Candy & Snacks, L.L.C., Shakespeare's (employer) appealed a representative's August 23, 2006 decision (reference 02) that concluded Guadalupe Martinez (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 19, 2006. The claimant participated in the hearing. Mary Bisinger appeared on the employer's behalf and presented testimony from one other witness, Alisa Shakespeare. Ike Rocha served as interpreter. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on February 15, 2006. She worked full time as a production worker in the employer's snack food packaging business. Her last day of work was May 20, 2006.

When hired, the claimant was told she would be paid an hourly wage of $9.00 per hour, and would receive additional premium pay when she exceeded the quota. The claimant normally exceeded the work quota, and as a result, she was normally averaging between $9.40 and $9.94 per hour in actual wages.

The employer laid the claimant off for lack of work from May 6 through about May 18. During the time of the layoff, the employer switched from the hourly pay with premium to a straight piece rate. The employer had intended the piece rate to essentially be the hourly rate divided by the prior quota; for example, if the quota had been 100, the piece rate should be $.09, so that if an employee completed only 100 in an hour, they would still receive $9.00 per hour, and if they exceeded 100 in the hour, they would still have additional pay.

The claimant resumed working as she had previously worked, but on May 18 she only averaged an effective rate of $9.11 per hour, and on May 19 she only averaged an effective rate of $8.49 per hour. On May 20 the claimant was approached at about noon by an office supervisor who told her that there would be a $130.00 deduction from what she had already worked because of a miscalculation; her resulting wage for working from 6:00 a.m. to 4:10 p.m. that day was only $42.00. Before leaving at the end of her shift the claimant inquired her foreman about the pay issue, and he responded that there was nothing that could be done. The claimant therefore determined that her compensation had been substantially affected, and decided not to continue her employment. The employer subsequently reissued payment of approximately $137.00 on June 16 after determining it had made an error in the claimant's pay.

The claimant established an unemployment insurance benefit year effective July 30, 2006.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for 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.

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.

A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist, nor is it pertinent that the claimant remained an "at will" employee. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956).

While in the long term it is possible that the employer might have resolved problems in applying the piece rate pay so as to not to substantially affect resulting pay, particularly with the discrepancies and inconsistencies in pay immediately experienced by the claimant, she

reasonably concluded that the change in the manner of compensation which had been implemented was a substantial change in her contract of hire. Dehmel, supra. Benefits are allowed.

DECISION:

The representative's August 23, 2006 decision (reference 02) is affirmed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs