IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RONALD E WHEELER
Claimant

IOWA DEPARTMENT OF CORRECTIONS
Employer

APPEAL NO. 06A-UI-09363-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/27/06 R: 03
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 19, 2006, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on October 4, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Scott Miller participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer from May 2, 1997, to February 8, 2006. He starting working as a correctional officer, and in September 2002, he accepted a promotion to the position of Lieutenant with a pay raise and supervisory job duties.

In December 2005, the claimant forwarded an email that he had received to another officer. The email referred to an African-American death row inmate, Tookie Williams, and contained racist language. Immediately after he sent the email, he contacted the correctional officer and told her to delete the email because he had sent it by mistake. The correctional officer did not delete the email but instead forwarded it to other correctional staff. In February 2006, newspapers reported the story about the distribution of the email and reported the claimant had circulated the email. The employer suspended the claimant with pay on February 8, 2006, while it investigated the matter. The employer disciplined the claimant for forwarding the email by demoting him to the position of correctional officer. The demotion resulted in a reduction in his pay of approximately 14 percent and a change in job duties, relieving him of supervisory duties and requiring him to have more direct contact with inmates.

The demotion was to go into effect February 24, 2006. The claimant went on leave based on his doctor's advice under the Family and Medical Leave Act starting February 24, 2006, due to depression. After the claimant exhausted all forms of leave on August 25, 2006, his supervisor,

Scott Miller, called him to find out if he planned to come back to work. He told Miller that he planned to report to work on August 28, 2006.

Before August 28, 2006, the claimant changed his mind. He decided to quit employment because his pay was cut, his job duties substantially changed, and he was going to be required to be in direct contact with inmates some of whom would know about the email incident, which created safety concerns for the claimant. He also quit because he was still receiving counseling for depression and believed that returning to work would be detrimental to his health, although his doctor had not advised him to quit.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code section 96.5-1. The Iowa Supreme Court has decided that each of the several reasons for leaving employment be considered in deciding whether the claimant had good cause to leave employment. Taylor v. Iowa Dep't of Job Service, 362 N.W.2d 534 (Iowa 1985). In this case, the claimant quit his employment for medical reasons and because he was demoted.

The claimant has not established he was compelled to leave employment due to a medical condition attributable to the employment. 871 IAC 24.26(6)b requires a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that he intends to quit unless the problem is corrected or condition is reasonably accommodated. Neither condition has been met here. He also was not advised to leave employment by a physician and has not offered to return to work after recovering from a illness or injury, which are conditions for receiving benefits under Iowa Code § 96.5-1-d,

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.

The next question is whether the changes in the claimant's rate of pay and job duties provided good cause attributable to the employer to leave employment. Although the rule refers to the "contract of hire," good cause for leaving is not restricted to individuals with written contracts or only to changes to the "hiring agreement." The unemployment insurance rules do not set forth the only "good causes" that qualify an individual for unemployment insurance in quit cases because the statute is the ultimate law governing a claimant receiving benefits. Substantial changes in the term and conditions of employment made by an employer also constitute good cause attributable to the employer to leave employment.

Are the cut in pay and changes in job duties in this case substantial changes in the terms and conditions of employment? In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in hours was, as a matter of law, a substantial change in the contract of hire (citing cases from other jurisdictions that had held reductions ranging from 19 percent to 26 percent were substantial). Id. at 703. Based on the reasoning in Dehmel, the combination of a 14 percent reduction in pay and the changes in the job duties would also be substantial.

The next question is whether the fact that the demotion was for discipline prevents the substantial change in the terms of employment from being good cause attributable to the employer. The Court in Dehmel stated that:

> It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer. . . . [G]ood cause attributable to the employer can exist even though the employer be free from all negligence or wrongdoing in connection therewith.

Therefore, under the reasoning of Dehmel, the fact that the pay reduction and change in job duties was for disciplinary reasons is immaterial in deciding whether the claimant left employment with good cause attributable to the employer. Furthermore, if the fault of the claimant is to be considered in deciding whether a claimant quits with cause in case involving a substantial change in the terms of employment, what level of fault is required? Does the result change depending on whether the pay cut was due to the employer's determination that the claimant's job performance was unsatisfactory, inefficient, negligent, or willful misconduct? In my judgment, the focus should be on whether the change was substantial rather than assessing the justification for the change, which is consistent with the reasoning in Dehmel.

In the alternative, only a demotion due to work-connect misconduct should be considered when evaluating good cause for quitting due to a disciplinary cut in pay and job duties. Based on the evidence, the claimant's one-time error in judgment would not meet the standard of willful and substantial work-connected misconduct found in 871 IAC 24.32(1).

Prior to the recent Supreme Court decision in Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005), this case would have been governed by understanding of the precedent established by the Iowa Supreme Court in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993), which established two conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions or a substantial change in the contract of hire. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that he intends to quit if the condition is not corrected. If this reasoning were applied in this case, the claimant would be ineligible because he failed to notify the employer of his intent to quit if the intolerable working conditions and the substantial change in the employment contract were not corrected.

In Hy-Vee Inc., however, the Iowa Supreme Court ruled that the conditions established in Cobb do not apply when a claimant quits due to intolerable or detrimental working conditions by reasoning that the Cobb case involved "a work-related *health* quit." Hy-Vee Inc., 710 N.W.2d at 5. This is despite the Cobb court's own characterization of the legal issue in Cobb. "At issue in the present case are Iowa Administrative Code Sections 345-4.26(1) (change in contract for hire) and (4) (where claimant left due to intolerable or detrimental working conditions)." Cobb, 506 N.W.2d at 448.

In any event, the court in Hy-Vee Inc. expressly ruled, "notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions." Hy-Vee Inc., 710 N.W.2d at 5. The court also overruled the holding of Swanson v. Employment Appeal Board, 554 N.W.2d 294, 297 (Iowa Ct. App. 1996), that a claimant who quits due to unsafe working conditions must provide notice of intent to quit. Hy-Vee Inc., 710 N.W.2d at 6. Based on the Hy-Vee Inc. reasoning, notice to quit unless conditions are remedied would also not be required when a claimant quits due to a substantial change in the terms and conditions of employment.

The court in Hy-Vee Inc. states *what is not required* when a claimant leaves work due to intolerable working conditions but provides no guidance as to *what is required*. The issue then is whether claimants when faced with substantial changes in the terms and conditions of employment are required to say or do anything before it can be said that they voluntarily quit employment with "good cause attributable to the employer," which is the statutory standard. Logically, a claimant should be required to take the reasonable step of notifying management about the unacceptable condition or change. The employer's failure to take effective action to remedy the situation then makes the good cause for quitting "attributable to the employer." In addition, the claimant should be given the ability to show that management was independently aware of the substantial change in the employment agreement to establish good cause attributable to the employer for quitting.

Applying these standards, the claimant has demonstrated good cause attributable to the employer for leaving employment. The employer demoted the claimant and knew that the change in his pay and job duties was substantial.

DECISION:

The unemployment insurance decision dated September 19, 2006, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw