

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALMIN BAHTAGIC
Claimant

WAL-MART STORES INC
Employer

APPEAL 18A-UI-00985-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/10/17
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 11, 2018, (reference 03) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 14, 2018. Employer participated by Jonathan Garcia, Assistant Manager. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibit 1 was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 24, 2017.

Claimant began working for employer in the tire department on February 17, 2017. Claimant began having an allergic reaction to the chemicals used in that department, and his physician recommended that he no longer work there in late July, 2017. Employer accommodated the injury and moved claimant to the sales department in early August, 2017. Claimant's hours stayed the same, but his pay was decreased from \$13.50 an hour to 12.83 an hour. Claimant was not in a managerial position before the change in job title, and he did not become a co-worker with employees he had previously supervised.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). A refusal to accept a night shift position at a sanitarium constitutes a good cause quit attributable to the employer when that shift would endanger the claimant's health. *Forrest Park Sanitarium v. Miller*, 333 Iowa 1341, 11 N.W.2d 582 (Iowa 1943).

Although claimant was not required by law to give the employer notice of his intent to quit, the change to the terms of hire must be substantial in order to allow benefits. In this case, claimant's Five percent decrease in his wages was not a substantial change in his contract of hire. Claimant has not met the burden of proof to show he quit with good cause attributable to the employer. Benefits are denied.

DECISION:

The January 11, 2018, (reference 03) decision is reversed. The claimant voluntarily left the employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn