

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

BRANDON D FARHAT
Claimant

APPEAL NO. 22A-UI-19962-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAS ACQUISITION COMPANY LLC
Employer

**OC: 11/06/22
Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On December 20, 2022, Brandon Farhat (claimant) filed a timely appeal from the December 14, 2022 (reference 02) decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on November 16, 2022 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 18, 2023. Claimant participated. Amber Carmon, Assistant Human Resources Manager, represented the employer. Exhibits 1, 2 and 3, email correspondence dated October 13, 2022, November 16, 2022, and January 11, 2023 respectively, was received into evidence. Exhibits A through D, consisting of the document pre-labeled Exhibit A, the online appeal, the screen shot document, and the History document respectively were received into evidence.

ISSUE:

Whether the claimant voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Brandon Farhat (claimant) was employed by DAS Acquisition Company, L.L.C. as a full-time mortgage loan originator from April 2022 until November 16, 2022, when he voluntarily quit in response to a substantial change in the compensation structure. At the time of hire, the employer offered and the claimant accepted compensation structured as a "non-recoverable" \$19.23 hourly wage plus a 50 basis points commission. The "non-recoverable" characterization meant the wage was not be treated as a draw and was recoverable from the claimant's sales commissions. After the claimant started in the employment and at some point before July 1, 2022, the employer's payroll processing personnel deviated from the compensation agreement and commenced treating the \$19.23 hourly wage as a draw. The claimant brought the issue to his supervisor's attention and the supervisor contacted the payroll processing personnel to have the error corrected. The supervisor's correspondence with the payroll personnel on that matter included the following:

Brandon's comp was set up incorrectly at new hire. He should be PLUS his bps. Not greater of, and not recoverable. This will likely [missing text] recoverable at his one year review. My apologies for any confusion [missing text]. [W]e will need to make an adjustment from the 7/15 payroll to [missing text].

In other words, in July 2022, the claimant's supervisor reaffirmed the claimant's compensation was \$19.23 an hour plus a 50 base points commission and was expected to remain the same during the first year of the employment. The claimant's one year anniversary would arrive in April 2023.

On October 13, 2022, the claimant's supervisor, Ben Lopanec, Branch Production Manager, notified the claimant that effective October 16, 2022, the employer would be changing the structure of the claimant's compensation. Mr. Lopanec's October 16, 2022 email message to the claimant indicates the employer had recently proposed keeping the claimant in the initial compensation arrangement until December 1, 2022 and changing the compensation structure at that time. Mr. Lopanec's indicated in the correspondence that the timeline for the change was being moved up because "After reviewing our branch position, everyone is making cost sacrifices." The change the employer implemented effective October 16, 2022 reduced the hourly wage to \$7.25 an hour (minimum wage), made that wage recoverable from the claimant's earned commission, and doubled the commission rate to 100 basis points. The employer changed the claimant's compensation in the context of company-wide cuts prompted by an increase in mortgage interest rates and a corresponding reduction in mortgage loan business. The first paycheck to reflect the change was issued at the end of October 2022. The second paycheck to reflect the change was issued on November 15, 2022. On November 16, 2022, the claimant tendered his resignation. The resignation was effective immediately.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

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.

“Change in the contract of hire” means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The claimant voluntarily quit on November 16, 2022 with good cause attributable to the employer. The quit was in response to substantial changes in the contract of hire, namely substantial changes in the amount and structure of the claimant's compensation. At a time when demand for the mortgage origination services was in steep decline due to rising mortgage loan rates, the employer substantially changed the claimant's compensation to the claimant's detriment. The employer substantially reduced the claimant's hourly wage from \$19.23 to \$7.25. The employer change the nature of the hourly compensation from non-recoverable to recoverable from commissions. The change to effective 100 percent commission at the time of decreased demand for services and decreased opportunity to generate commission, imposed a substantial degree of financial risk and insecurity on the claimant that had not previously been a condition of the employment. The claimant's continued participation in the employment for one or two pay periods after the effective date of the change did not constitute acquiesce in the changes. Regardless of the employer's motive for making the change, the change was detrimental to the claimant and good cause for leaving the employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The December 14, 2022 (reference 02) decision is REVERSED. The claimant voluntarily quit the employment on November 16, 2022 for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

January 20, 2023
Decision Dated and Mailed

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.