



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 03, 2014

IN THE MATTER OF: Appeal Board No. 577302

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected, contending that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause.

By decision filed May 6, 2013 (Appeal Board No. 570447), the Board rescinded the decision of the Administrative Law Judge filed December 14, 2012, and remanded the case to the Hearing Section for a hearing and a decision. The Administrative Law Judge held a hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed November 18, 2013 (), the Administrative Law Judge sustained, effective July 16, 2012, the employer's objection and overruled the initial determination.

The claimant appealed the Judge's decision to the Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for the employer, a security services company, for about seven months, until July 3, 2012. He was hired as a uniformed security guard at \$8 per hour. He worked from 7 p.m. to 7 a.m. at a construction site on Saturdays and Sundays only. After working in this capacity for about three months, he was promoted in March 2012 to plain clothes store detective, assigned to a chain of supermarkets. In this capacity, he worked Tuesday through Saturday, about nine to eleven hours per day, on a varied daytime and early evening schedule in five different stores. He was paid \$10 per hour. After the claimant had worked as a plain clothes store detective for about four months, the employer decided, effective on July 3, 2012, to transfer him back to his original position and schedule as a uniformed security guard at

the construction site. He was notified on that date that he was being removed from the plain clothes position immediately but could still work as a uniformed security guard. The claimant was subsequently told of and provided a written weekend schedule, from 7 p.m. to 7 a.m., as a uniformed security guard at the same construction site where he had previously worked. The claimant declined this reassignment or transfer and did not return to work for the employer thereafter.

OPINION: The credible evidence establishes that the claimant voluntarily separated from his employment after he declined a reassignment or transfer. Although the claimant contends that he was never provided or told of any uniformed security guard schedule after being removed from his plain clothes store detective position, even crediting the employer that he was, we find that the claimant nevertheless had good cause to leave his employment when he did. The transfer or reassignment, which was unilaterally imposed by the employer, would necessarily have involved a reduction in the claimant's compensation of greater than ten percent. Such reduction in compensation amounts to a substantial change in the terms and conditions of employment for unemployment insurance purposes, and establishes good cause to quit (Matter of Knoblauch, 239 AD2d 761.) We note that the record does not clearly establish that the claimant's hourly pay would have been reduced from \$10 to \$8 per hour after transfer. However, even assuming that the claimant would have continued to receive \$10 per hour, it is clear that his total weekly hours - and thus his compensation - were going to be reduced by greater than ten percent. Under these circumstances, we conclude that the claimant's voluntary separation was with good cause, and accordingly, that he separated from his employment under nondisqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause, is overruled.

The initial determination, holding the claimant eligible to receive benefits, is sustained.

The claimant is allowed benefits with respect to the issues decided herein. (??
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MICHAEL T. GREASON, MEMBER