

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER A SEAVEY**  
Claimant

**APPEAL NO. 14A-UI-07517-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VON MAUR INC**  
Employer

**OC: 05/04/14**  
**Claimant: Appellant (2R)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated July 16, 2014, reference 03, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 13, 2014. The claimant participated. Participating on behalf of the claimant was Mr. Charles W. Showalter, Attorney at Law. The employer participated by Ms. Beverly Weiss, Department Manager. Claimant's Exhibits A, B, C and D were received into evidence.

**ISSUE:**

At issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Heather Seavey was employed by Von Maur, Inc. from June 3, 2013 until June 20, 2014 when she voluntarily left employment due to a change in the conditions of hire. Ms. Seavey was hired as a full-time sales associate and was paid by the hour. Her immediate supervisor was Beverly Weiss.

Ms. Seavey left her employment with Von Maur, Inc. based upon her reasonable belief that the employer had permanently changed her employment status from that of a full-time employee to a part-time worker.

Ms. Seavey had applied for and been hired for full-time work with Von Maur on June 3, 2013. The claimant presented a doctor's note to the employer indicating work restrictions limiting her to four hours of work per day for approximately one month because of a foot problem indicating that the claimant would be re-evaluated on her next doctor's visit. (See Claimant's Exhibit D). Ms. Seavey informed her employer of her desire to work limited hours only for approximately one month until her foot condition improved. The employer complied with the medical limitation and began to assign Ms. Seavey to temporary, part-time hours. A short time thereafter, the employer hired a permanent, full-time replacement to the claimant's job position in the department and required the claimant to complete a change in status form permanently

changing her full-time employment to that of a part-time employee. Part-time employees are eligible to work only 15 to 20 hours per week.

Because of her concern that her temporary request to go part time had been changed by the employer to a permanent part-time status that would affect her ability to receive public assistance for child care, the claimant went to the store director about the issue. Ms. Seavey informed the store director that she could not be transferred to permanent part-time work as it would affect her child care and informed the store director that she would have to leave employment, if her status was not changed back to that of a permanent full-time employee, although the claimant was willing to continue working four hours per week until her doctor authorized more work per week.

Although informed of the necessity to change the claimant's official permanent status back to that of a full-time employee, the employer did not do so and Ms. Seavey informed the store director that she would have to leave employment because of the unilateral change in her work status by the employer and its affect upon her ability to receive child care. Ms. Seavey maintains that she had provided notice to the store director that she would not be reporting to work on June 20 or thereafter.

The employer had elected to fill the full-time job position that was available in Ms. Seavey's department when the claimant requested to work only part time for a limited period of time. The employer was unwilling to change the claimant's status back to that of a full-time employee because the claimant had not yet been fully released by her physician to resume full-time work. The employer was aware that the permanent status change made by the employer would affect Ms. Seavey's ability to receive child care assistance and might cause her to leave her employment with the company. It appears that the claimant's department manager was not aware of the conversation between Ms. Seavey and the store director and concluded that the claimant had quit employment after she failed to report to work for three or more consecutive workdays on and after June 20, 2014.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

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.

A change in the contract of hire means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Department of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). The focus in analyzing a leave due to a change in the conditions or contract of hire is the impact on the claimant rather than the employer's motivation. An employee acquiesces to 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 App. 1990).

The evidence in the record establishes that Ms. Seavey voluntarily quit employment effective June 20, 2014 because of a substantial change in the conditions of her employment. The employer had unilaterally changed the claimant's permanent job classification from a full-time employee to that of a part-time employee which would have negatively affected Ms. Seavey's ability to receive public assistance for child care on an ongoing basis. The claimant had acted reasonably in contacting the store director and requesting that the permanent status change be altered to reflect that she was still a full-time employee, although she was temporarily working reduced hours for a medical reason. The claimant had concluded that the change implemented by the employer would preclude her from maintaining central public assistance with her child care expenses. The claimant's voluntary quit was therefore with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits providing that she meets all eligibility requirements of Iowa law. The employer's account may be charged.

Based upon the evidence in the record it is not clear whether Ms. Seavey meets the able and available requirements of the law due to child care issues.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the evidence in the record is insufficient upon which to base a conclusion about Ms. Seavey's ability and availability for work following her separation from employment with Von Mau, Inc.

The issue of the claimant's availability is remanded to the Claims Division so that the matter can be further investigated and an appealable decision can be issued regarding the claimant's availability for work within the meaning of the Employment Security Law.

**DECISION:**

The agency representative's decision dated July 16, 2014, reference 03, is reversed. The claimant quit employment with good cause attributable to the employer. The claimant is eligible for benefits, providing that she meets all other eligibility requirements of Iowa law. The employer's account may be charged with benefits paid to the claimant.

The matter of the claimant's availability is remanded to the Claims Division for investigation and the issuance of an appealable determination on the claimant's availability for work since June 20, 2014.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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