

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET PESTKA
Claimant

APPEAL NO. 06A-UI-11448-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FROEHLICH PROPERTIES INC
FRO'S**
Employer

**OC: 10/15/06 R: 04
Claimant: Appellant (4R)**

Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Janet Pestka filed a timely appeal from the November 21, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 14, 2006. Ms. Pestka participated. Co-owner Brian Froehlich represented the employer.

ISSUES:

Whether the claimant voluntarily quit for good cause attributable to the employer.

Whether the claimant quit due to working conditions that were intolerable and/or detrimental and that would have prompted a reasonable person to quit.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Janet Pestka was employed as a part-time cook at Fro's café from March 9, 2006 until October 4, 2006, when she voluntarily quit due to working conditions she concluded were intolerable. The café/bar is owned by Julie and Brian Froehlich. Mrs. Froehlich manages or operates the restaurant. Mrs. Froehlich did not testify at the hearing. Ms. Pestka was the day cook and worked 8:00 a.m. to 2:00 p.m. or 2:30 p.m., Monday through Friday. This amounted to 27-28 hours per week. The restaurant served food from 9:00 a.m. to 1:00 p.m. and reopened for dinner. During the day hours, Ms. Pestka and Mrs. Froehlich would be the only staff at the restaurant. Ms. Pestka would cook and Mrs. Froehlich would deliver meals. Ms. Pestka was the first to arrive and would prepare the restaurant for the day's business. This would include prep work to get food items and/or ingredients ready. During the evening shift, the employer generally had one person on staff to operate the kitchen. The kitchen staff was responsible for cleaning the kitchen at the end of the day and preparing essential food items/ingredients that the day staff would need for the following day's business.

Approximately two and one-half weeks into Ms. Pestka's employment, there was a change in the evening kitchen staff. Thereafter, it became a frequent occurrence for Ms. Pestka to arrive

at the café to find the evening staff had not properly cleaned the kitchen and had not prepared essential food items/ingredients. This situation added to Ms. Pestka's workload. Ms. Pestka brought her concerns to the attention of Mrs. Froehlich and continued to discuss those concerns with Mrs. Froehlich throughout the employment. The problems with the evening staff not completing their assigned work was never resolved. Mrs. Froehlich appears to have chosen an indirect method of dealing with the problem. Mrs. Froehlich would attach memos to the evening staff's paychecks. Approximately six weeks prior to Ms. Pestka's quit, Ms. Pestka announced that she would be resigning due to the problem with the evening staff and the impact on Ms. Pestka's workload. Mrs. Froehlich indicated once more that she would address the problem, but the issues continued unresolved. Ms. Pestka last brought the problems to the attention of Mrs. Froehlich on October 3. On October 4, Ms. Pestka arrived to find the kitchen had once again not been properly cleaned and food items/ingredients had once again not been prepped. Ms. Pestka got the restaurant ready for business and then contacted the person she thought was the on-call kitchen staff for the day. Ms. Pestka advised that person that she was leaving and departed the restaurant at 9:45 a.m.

The employer acknowledges the ongoing problems with the evening staff. The employer acknowledges that Ms. Pestka was a good worker. The employer provided Ms. Pestka with raises during the course of her employment, in part, to compensate for the ongoing problems with the evening staff and the impact on Ms. Pestka's workload.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Pestka's voluntary quit was for good cause attributable to the employer. It does not.

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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence in the record indicates that there was some increase in Ms. Pestka's workload as a result of the evening staff not fully completing their cleaning and prep responsibilities. However, the impact on Ms. Pestka did not rise to the level of intolerable or detrimental working conditions. One important fact is despite the early onset of the problem with the evening staff,

Ms. Pestka continued in the employment for six or seven months under the same conditions. The fact that Ms. Pestka stayed so long after the problems began is an indication that the situation was not in fact intolerable or detrimental. While Ms. Pestka was justified in expressing her discontent to the employer, the evidence does not present working conditions that would have prompted a reasonable person to quit. The evidence indicates that Ms. Pestka quit due to dissatisfaction with the work environment, rather than intolerable or detrimental working conditions. However, quits due to dissatisfaction with the work environment are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Pestka voluntarily quit the part-time employment without good cause attributable to the employer. The quit was a disqualifying event and Ms. Pestka is disqualified for benefits based on wage credits accrued from the employment until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Pestka.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

This matter will be remanded to a claims representative for determination of whether Ms. Pestka is eligible for reduced benefits based on wage credits she earned from base period employment other than the employment with Fro's.

DECISION:

The Agency representative's November 21, 2006, reference 02, decision is modified in favor of the claimant as follows: The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits based on wage credits accrued from the part-time employment until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. Because the employment was part-time, the claimant may be eligible for reduced benefits. This matter is remanded to a claims representative for determination of whether Ms. Pestka is eligible for reduced benefits based on wage credits she earned from base period employment other than the employment with Fro's.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css