

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHEENA M DUNSTON**  
Claimant

**APPEAL NO. 19A-UI-05456-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACT INC**  
Employer

**OC: 06/02/19**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Sheena Dunston filed a timely appeal from the June 27, 2019, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Dunston voluntarily quit on May 28, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 1, 2019. Ms. Dunston participated. Deb Schreiber represented the employer. Exhibits A, B and C were received into evidence.

**ISSUE:**

Whether Ms. Dunston's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Sheena Dunston was employed by ACT, Inc. as a full-time Customer Care Advisor 2 from December 2018 until May 28, 2019, when she voluntarily quit. Manager Mike Jones was Ms. Dunston's immediate supervisor. Ms. Dunston's work duties involved fielding questions regarding the ACT's main product, the ACT standardized test. Ms. Dunston was part of the employer's national customer care area. Ms. Dunston's work hours were 11:45 a.m. to 8:15 p.m., Monday through Friday. Ms. Dunston also assisted on Saturday test days as needed. Ms. Dunston's hourly wage was \$13.56.

On May 14, 2019, ACT management announced that the company would be transitioning the work performed by the customer care staff to an out-of-state vendor. Ms. Dunston was away from work at the time of the announcement. When Ms. Dunston arrived at her workspace the next day, she found a copy of the written announcement. The announcement indicated that national customer care responsibilities would be transitioned to the out-of-state vendor by August 1, 2019 and that the remainder of the customer care responsibilities would be transitioned by November 9, 2019. The announcement indicated that the transition would result in elimination of 115 full-time ACT customer care positions and elimination of 40 temporary employment positions over the next six months. The announcement indicated that those employees directly affected by the transition had been notified on May 14, 2019. Ms. Dunston

was one of those directly affected employees. The written announcement stated that the employer would provide at least a 30-day notice to an employee prior to that employee's effective layoff date. The written announcement stated that in the unlikely event that less than 30-days' notice was possible, the employer would still pay the employee the equivalent of 30-days wages. The written announcement encouraged employees to stay with ACT through the transition period and referenced the ACT benefits package, opportunities for exploring other positions within ACT, and job search assistance the employer would make available. The written announcement also encouraged employees to stay through the transition period by referencing eventual payout of accrued but unused paid time off (PTO) benefits, and by referencing severance pay that would only be made available if the employee stayed until his or her designated separation date.

The employer's anticipated that Ms. Dunston's supervisor would follow up with her regarding any additional questions or concerns Ms. Dunston had. However, Ms. Dunston was unable to obtain additional information from Mr. Jones. Ms. Dunston did speak with another manager, who told Ms. Dunston that there might be other work for Ms. Dunston in the same department, but that her work hours might change. Ms. Dunston spoke with the ACT benefits staff regarding the impact her departure would have on her 401k account and severance pay, but elected not to explore other opportunities within ACT or the employer's offer of job search support.

After ACT management announced the decision to outsource the customer care work, general morale amongst the customer care staff diminished. About two dozen ACT customer care employees elected to leave the employment soon after the announcement. The departure of co-workers led to an increase in Ms. Dunston's workload so that she was required to stay up to 15 minutes beyond her usual quit time. This increase in workload was not unlike increased workloads Ms. Dunston had experienced earlier in the employment during ACT's peak times.

Ms. Dunston elected to walk off the job on May 28, 2019, immediately after she participated in a quarterly staff meeting with the company's chief executive officer. Ms. Dunston left after concluding that the chief executive officer did not sufficiently value the customer care employees. On May 31, 2019, Mr. Jones contacted Ms. Dunston by email to have her clarify her intentions. Ms. Dunston indicated at that time that she would not be returning to the employment. Ms. Dunston referred to her grandfather's health, but that was not a factor in her decision to leave the employment. Though Ms. Dunston cites mental health issues as a factor in her decision to leave the employment, neither a doctor nor a mental health professional advised Ms. Dunston to leave the employment.

ACT staff commenced training the outside vendor's staff at the end of June 2019. During July 2019, the outside vendor ramped up its ability to perform the national customer care work. During that time, the employer continued to have ACT customer care employees handle customer care calls related to the standardized test.

As of the August 1, 2019, appeal hearing date, the employer had not yet notified any ACT employees of their effective layoff dates. However, ACT anticipated it would begin providing such notice in August 2019. Due at least in part to the exodus of ACT customer care employees, ACT extended the contract by which it secures temporary workers from a local vendor. There would have been work for Ms. Dunston beyond August 1, 2019, including work in the customer care area in support of the employer's other products.

## REASONING AND CONCLUSIONS OF LAW:

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 Code § 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. 871-24.25(29) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

Iowa Admin. Code r. 871-24.25(40) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(40) Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff. Benefits shall not be denied from the effective date of the scheduled layoff.

Iowa Admin. Code r. 871-24.26(13) 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:

(13) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Administrative Code rule 871-24.26(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 213 (Iowa 2005).

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 weight of the evidence in the record establishes a May 28, 2019 voluntary quit that was without good cause attributable to the employer. The employer's May 14, 2019 announcement put Ms. Dunston on notice that at some unspecified point in the upcoming six months she could expect to receive 30-days' notice that her specific position in the national customer care area was being eliminated. The employer's May 14 announcement fell short of blanket notice of a scheduled layoff to be effective August 1, 2019. At the time Ms. Dunston left the employment on May 28, 2019, she had not received notice of her scheduled layoff. Ms. Dunston let her emotions get the best of her and acted rashly by walking off the job when ongoing work continued to be available. The increase in call volume assigned to Ms. Dunston and the corresponding need to stay up to 15 minutes later did not rise to the level substantial changes in the conditions of the employment. Neither those changes nor the diminished morale rose to the

level of intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment. Rather, a reasonable person would have taken advantage of the ongoing employment, the incentives the employer offered to explore other opportunities within the company, and other transition support the employer offered to affected employees. There was no bona fide medical or mental health basis for the quit.

Because the evidence establishes a voluntarily quit without good cause attributable to the employer, Ms. Dunston is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Dunston must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The June 27, 2019, reference 02, decision is affirmed. The claimant voluntarily quit the employment on May 28, 2019 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/scn