IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

HARLEY CARTER
Claimant

FERRARA CANDY COMPANY
Employer

APPEAL NO. 17A-UI-07593-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/09/17
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Harley Carter filed a timely appeal from the July 25, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Carter had voluntarily quit on July 11, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 14, 2017. Mr. Carter participated and presented additional testimony through Juanita Carter. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate in the hearing. Exhibit A was received into evidence.

ISSUE:

Whether the claimant'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: Harley Carter was employed by Ferrara Candy Company as a full-time machine operator until July 11, 2017, when he voluntarily quit the employment. Mr. Carter left early on July 11, 2017 and did not return to the employment. About three months before the employment came to an end, the employer cut back Mr. Carter's work hours. Before the change Mr. Carter generally worked 12-hour shifts up to seven days per week. Before the change, Mr. Carter might have to report to work as early as 3:30 a.m. and stay as late as 6:30 p.m. After the change, Mr. Carter's work hours were 7:00 a.m. to 7:30 p.m., Monday, Tuesday and Wednesday and a four-hour shift on Thursday. The reduction in work hours had a corresponding impact on Mr. Carter's wages. Mr. Carter continued in the employment despite change in his work hours.

Mr. Carter's ex-wife, Juanita Carter, also worked for the same employer, but in a different department. The couple has three minor children, ages nine, four and three. The couple has joint physical custody of their children and works out the custody arrangement as they go along. Mr. Carter is from the Fort Dodge area. Ms. Carter is from Georgia.

About a week before Mr. Carter quit his employment, the employer changed Juanita Carter's work hours. Before the change, Ms. Carter worked 5:30 p.m. to 5:30 a.m. three days per week and a four-hour shift on Sunday. After the change, Ms. Carter's assigned work hours were 3:00 p.m. to 11:30 p.m., Monday through Friday and Saturdays as needed.

Once the employer changed Juanita Carter's work hours, that change in hours impacted on the child care arrangements the Carters had crafted. Once the employer changed Juanita Carter's work hours, the couple's work hours overlapped from mid-afternoon and early evening. Once Juanita Carter's work hours changed, Mr. Carter began to leave work early from his shift at 2:30 p.m. to care for the couple's children. Mr. Carter left early with the understanding that he was accruing attendance points by doing so. Mr. Carter left early on July 6, 7 and 10, 2017. When Mr. Carter arrived for work on July 11, 2017, he told his supervisor, Floor Supervisor Judith Perez, that he needed to leave work early again. Ms. Perez told Mr. Carter that he was on his last attendance point and that if he left early on July 11, he would have no more available attendance points. Mr. Carter elected to leave work early anyway and then did not return to the employment other than to collect his final paycheck. Though Ms. Perez had warned Mr. Carter on July 11, 2017 about his attendance points, neither Ms. Perez nor anyone else at the company had notified Mr. Carter that he was discharged from the employment.

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.

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).

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).

Iowa Admin. Code r. 871-24.25(17) 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:
>
> (17) The claimant left because of lack of child care.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The evidence establishes that there were indeed substantial changes in the conditions of Mr. Carter's employment that reduced his work hours and wages, but these changes occurred three months prior to Mr. Carter's voluntary quit. By remaining in the employment for so long after the changes, Mr. Carter effectively acquiesced in the changes and the changed conditions became the established conditions of the employment. The evidence does not establish working conditions that a reasonable person would deem intolerable or detrimental. Despite the reduction in work hours, Mr. Carter was still working full-time and was paid for full-time work. The changes that the employer made to Juanita Carter's work hours were not changes in the conditions of Mr. Carter's employment. Mr. Carter voluntarily quit the employment by failing to return to work after leaving early on July 11, 2017. Mr. Carter voluntarily quit in anticipation of being disciplined for attendance, not in lieu of being discharged. Mr. Carter severed the employment relationship before the employer had an opportunity to decide upon or communicate discipline in connection with Mr. Carter's earlier departures and accumulation of attendance points. The Carters reasonably desired to maintain appropriate supervision for their three minor children. A reasonable person would conclude that there other means to ensure appropriate care that the path that Mr. Carter pursued. It appears that the Carters had faced similar issues with overlapping work hours prior to the employer's reduction of Mr. Carter's work hours three months before he separated from the employment. The Carters had managed to work through those earlier work hour and child care issues. A reasonable person would conclude they could do the same in connection with the most recent change in Juanita Carter's work hours. In any event, under the applicable administrative code rule, Mr. Carter's voluntary quit due to a lack of childcare was without good cause attributable to the employer. Accordingly, Mr. Carter is disqualified for benefits until he has worked in and

been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Carter must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The July 25, 2017, reference 01, decision is affirmed. The claimant voluntarily quit the employment on July 11, 2017 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs