IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TOBY J CAMPANELLI
Claimant

BRUEGGER'S ENTERPRISES INC
Employer

APPEAL NO. 13A-UI-06320-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/014/13
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Toby Campanelli filed a timely appeal from the May 23, 2013, reference 01, decision that denied benefits based on an agency conclusion that he had voluntarily quit without good cause attributable to the employer. After due notice was issued, a hearing was held on July 3, 2013. Mr. Campanelli participated. Patrick Holderness represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-06321-JTT. The administrative law judge took official notice of the agency's database readout (DBRO) concerning the claim for benefits as well as the agency's administrative record of the claimant's weekly claim reporting (KCCO).

ISSUE:

Whether Mr. Campanelli voluntarily quit for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Toby Campanelli was employed by Bruegger's Enterprises as a full-time assistant manager from November 2012 until April 16, 2013, when he voluntarily quit due to a problem with the work hours. At the start of the employment, the employer assigned Mr. Campanelli to work at a store located on Mount Vernon Road in Cedar Rapids. Patrick Holderness was the General Manager at that store and functioned as Mr. Campanelli's trainer and supervisor. Mr. Holderness' immediate supervisor is Andrew Hilliard, District Manager. Mr. Campanelli knew at the time of hire that the employment would be full-time and that the employer expected him to work 50 hours per week. It is the employer's established practice to require all managers, including assistant managers, to work five 10-hour shifts per week.

Mr. Holderness and Mr. Hilliard deviated from the five 10-hours shifts per week practice and protocol during most of Mr. Campanelli's employment. They did this to accommodate Mr. Campanelli's parenting responsibilities. Mr. Campanelli shares custody of his six-year-old daughter with the girl's mother. The mother resides in North Liberty. The child attended school in North Liberty. From the start of the employment, the employer allowed Mr. Campanelli to work a combination of 12-hour and eight-hour shifts, so that Mr. Campanelli could get his child

to and from school, or to and from the before and after school program, in North Liberty. When Mr. Campanelli worked an eight-hour shift, he would generally work from 7:30 a.m. to 4:30 p.m. When Mr. Campanelli worked a 12-hour shift, he would generally start work at 5:30 or 6:00 a.m. and work until 5:30 or 6:00 p.m. Mr. Campanelli had at times had to call upon his daughter's mother to assist with getting the child to and from school or otherwise caring for the child when Mr. Campanelli was at work. The child's mother had indicated some displeasure in response to such requests.

On March 28, Mr. Holderness and Mr. Hilliard met with Mr. Campanelli to discuss the fact that they did not want to continue to provide the non-standard scheduling option to Mr. Campanelli and wanted instead to bring his work schedule in line with the standard scheduling of management staff, five 10-hour shifts. Mr. Holderness and Mr. Hilliard advised Mr. Campanelli that as of June 1, he would no longer be allowed the non-standard scheduling arrangement. The timing of the change would get Mr. Campanelli through the end of the school year. Under the standard scheduling arrangement, Mr. Campanelli would usually be scheduled to work from 6:00 a.m. to 4:00 p.m. or from 7:00 a.m. to 5:00 p.m. Mr. Campanelli might also be asked to work 10:00 a.m. to 8:00 p.m. or from 5:00 a.m. to 3:00 p.m.

Mr. Campanelli advised Mr. Holderness and Mr. Hilliard at the time of the March 28 meeting, or shortly thereafter, that the change in the scheduling would not work for him and that he would be leaving the employment in two weeks instead. Mr. Campanelli continued to work for the employer until April 16, 2013, at which time his voluntary quit was effective. Mr. Campanelli delivered a written resignation letter to the employer on his last day. Though the employer intended to implement the scheduling change effective June 1 and was anxious to bring Mr. Campanelli's schedule in line with the employer's scheduling practices, the employer was willing to allow Mr. Campanelli to continue to work the same schedule he had been through May 31, 2013.

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.

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.

When a claimant voluntarily quit employment due to a lack of adequate child care, the quit is presumed to be without good cause attributable to the employer. See Iowa Administrative Code rule 871 IAC 24.25(17).

871 IAC 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 establishes a change in the contract of hire that was to be effective June 1, 2013. The change in schedule that was to be effective June 1 would not provide good cause for separating from the employer a month and a half earlier. Mr. Campanelli's quit, effective April 16, 2013, was without good cause attributable to the employer.

Even if there had been a sufficient nexus between the quit date and the effective date of the change in work hours, the weight of the evidence fails to establish a *substantial* change in the conditions of the employment. In essence, the employer was talking about adding a couple hours to Mr. Campanelli's shift a couple times per week. At the same time, the employer would be reducing Mr. Campanelli's work hours on other days in the week by a corresponding amount. The weight of the evidence establishes that Mr. Campanelli had the ability and means to arrange for appropriate child care for his daughter during those few additional hours when he could not attend to her needs. The fact that the child's mother indicated displeasure in connection with such requests is not enough to make the relatively modest proposed change in the work schedule into a substantial change in the conditions of the employment. The employer gave Mr. Campanelli a reasonable amount of time, two months, to make any necessary adjustments to the child care arrangement.

Mr. Campanelli voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Campanelli is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Campanelli.

DECISION:

The Agency representative's May 23, 2013, reference 01, decision is affirmed. The claimant voluntarily quit the employment 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, provided he is otherwise eligible. 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/pjs