

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA SOMERS
Claimant

APPEAL NO. 07A-UI-02876-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ERRANDS SERVICE-N-MORE INC
190 E LECLAIRE RD
Employer

OC: 02/11/07 R: 12
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Lisa Somers filed a timely appeal from the March 12, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 5, 2007. Ms. Somers participated and presented additional testimony through former Errands-N-More Director of Technical Support/Dispatcher Robert Beeks and former Errands-N-More Housekeeper Rennie Stephs. Steve Ziebell, Vice President, represented the employer. The administrative law judge received claimant's Exhibit A into evidence. The administrative law judge received claimant's Exhibits A, B and C. The administrative law judge took official notice of the sworn testimony provided by Steve Ziebell, Robert Beeks, and Lisa Somers on March 28, 2007 in appeal number 07A-UI-02544-JTT, concerning Mr. Beeks as the claimant/appellant and Errands-N-More as the employer.

ISSUE:

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

Whether the claimant's quit was in timely response to a significant change in the conditions of his employment.

Whether the claimant's quit was prompted by intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lisa Somers was employed by Errands-N-More as a full-time Homemaker Supervisor from March 2005 until February 10, 2007, when she voluntarily quit. Ms. Somers quit because the employer did not pay Ms. Somers and other employees on time and because the employer paid Ms. Somers and other employees with checks that were rejected due to insufficient funds. On Friday, February 9, payday, the employer did not provide Ms. Somers with her paycheck. The employer's late payment to Ms. Somers and others caused Ms. Somers to be concerned on a weekly basis about whether she would be paid on time. The two final paychecks Ms. Somers

received from the employer were rejected by the employer's bank due to insufficient funds. The employer had previously issued checks to Ms. Somers that were rejected by Ms. Somers' bank and/or the employer's bank due to insufficient funds.

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.

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).

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 Ms. Somers quit the employment due to a substantial change in the conditions of the employment and due to intolerable working conditions that would

have prompted a reasonable person to quit the employment. The significant change and intolerable working condition was the employer's untimely payment for the work Ms. Somers had performed and the employer's issuance of payroll checks without sufficient funds to cover the checks. Ms. Somers quit in a timely fashion in response to the most recent instance of late payment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Somers quit the employment for good cause attributable to the employer. Accordingly, Ms. Somers is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Somers

DECISION:

The claims representative's March 12, 2007, reference 01, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css