IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TRICIA A BLOZVICH
Claimant

CEDAR RAPIDS – ST MATTHEW
Employer

APPEAL NO: 17A-UI-05590-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/30/17
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Tricia Blozvich filed an appeal from the May 25, 2017, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Blozvich voluntarily quit on April 21, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 13, 2017. Ms. Blozvich participated. Paul Jahnke represented the employer and presented testimony through Becky Rasmussen.

ISSUE:

Whether Ms. Blozvich separated from the employment for reason that disqualifies her for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tricia Blozvich was employed by St. Matthew Early Child Center (E.C.C.) as a full-time Assistant Teacher from 2013 until April 21, 2017, when she voluntarily quit in response to a change in her assigned work duties. Becky Rasmussen, E.C.C. Director, was Ms. Blozvich's immediate supervisor throughout the employment. Carrie Hegelson, Assistant E.C.C. Director, also had supervisory authority over Ms. Blozvich's work. When Ms. Blozvich began her employment, she was assigned to the toddler room, where she cared for infants and toddlers up to 24 months old. Ms. Blozvich was most comfortable working with children two years old and younger. Ms. Blozvich continued to work in the toddler room until August 2016, when she transitioned, with the same group of children, to the two-year old room. Ms. Blozvich continued to work in the two-year-old room until April 18, 2017. From time to time, the employer would have Ms. Blozvich fill in for employees in other rooms at the child care center. The Lead Teacher in the two-year-old room was Heather Waddell. Ms. Blozvich and Ms. Waddell had an ongoing personality conflict.

On April 19, 2017, Ms. Rasmussen and Ms. Hegelson decided to move Ms. Blozvich to different duties until the end of May 2017 and then return her to the two-year-old room at the end of May. That decision followed an April 18, 2017 disagreement between Ms. Blozvich and Ms. Waddell.

On April 18, Ms. Blozvich moved the cot on which a child was sleeping so that she could sweep a mess under the cot. Ms. Waddell moved the cot back before Ms. Blozvich could sweep. Ms. Waddell then notified Ms. Hegelson that she could no longer work with Ms. Blozvich. When Ms. Hegelson reported to the room, she moved the sleeping child's cot so that the mess beneath could be swept. Prior to April 18 incident, Ms. Rasmussen had already decided to separate Ms. Blozvich and Ms. Waddell at the end of May 2017 to resolve the interpersonal conflict issues. Ms. Waddell had volunteered to move to a different room. The plan had been for the pair to continue to work together until the end of May, at which time Ms. Blozvich would remain in the two-year-old room and another lead teacher would join the two-year-old room.

Prior to the April 18 incident, Ms. Rasmussen and Ms. Blozvich discussed immediately removing Ms. Blozvich or Ms. Waddell from the two-year-old room. The employer briefly removed Ms. Waddell from the room, but subsequently returned her to the room. As part of that earlier discussion, Ms. Blozvich discussed with Ms. Rasmussen her issues with anxiety. Ms. Blozvich has a long-standing anxiety disorder diagnosis and has more recently been diagnosed with obsessive compulsive disorder (O.C.D.). Ms. Blozvich had taken prescription medication for anxiety issues for about a year. Ms. Rasmussen was aware that Ms. Blozvich was on medication for a mental health issue, but did not know the specific diagnosis. The employer factored Ms. Blozvich's anxiety concerns in the employer's initial decision to have Ms. Waddell, rather than Ms. Blozvich, move from the room. Ms. Blozvich did not provide the employer with any medical documentation in support of a need for medically-based reasonable accommodations. The employer did not request any such documentation.

After the April 18 incident, Ms. Rasmussen and Ms. Hegelson decided they needed to immediately separate the two employees and could not wait until the end of May. They decided to have Ms. Blozvich work in other rooms at the child care center until the end of May 2017, at which time they would return her to the two-year-old room with a different lead teacher. Ms. Blozvich was off work on April 19 and 20. When Ms. Blozvich returned to work on April 21, 2017, Ms. Hegelson told her that she was to report for work in room A-1. Room A-1 was the three-year-old-room. When Ms. Blozvich asked why she was being moved, Ms. Hegelson told Ms. Blozvich that Ms. Rasmussen and Ms. Hegelson would move her wherever they needed to. The duties in the three-year-old room were similar to the duties in the two-year-old room, but the three-year-olds were less dependent. Ms. Blozvich was very upset about being moved from her previously assigned room to the three-year-old room. When Ms. Hegelson directed Ms. Blozvich to report to the three-year-old room, Ms. Blozvich complied, but also requested to speak with Ms. Rasmussen as soon as Ms. Rasmussen arrived for work.
When Ms. Rasmussen arrived on April 21, she sent someone to replace Ms. Blozvich so that Ms. Blozvich could go speak with Ms. Rasmussen. Before Ms. Rasmussen arrived, Ms. Blozvich reviewed the schedule for the week of April 24-28. On April 24 and 25, Ms. Blozvich was to work with the older two-year-olds. April 26 was Ms. Blozvich's scheduled day off. On April 27, Ms. Blozvich was to work with four-year-olds. On April 28, Ms. Blozvich was to work in the three-year-old room. When Ms. Blozvich arrived at Ms. Rasmussen's office, Ms. Rasmussen opened the conversation by stating that she understood Ms. Blozvich wished to speak with her. Ms. Blozvich told Ms. Rasmussen that she could no longer work in the three-year-old room. Ms. Rasmussen told Ms. Blozvich that she would need a written notice if Ms. Blozvich was quitting. Ms. Rasmussen did not discharge Ms. Blozvich from the employment and did not instruct Ms. Blozvich to quit the employment. Ms. Blozvich left Ms. Rasmussen's office, went to the two-year-old room to which she had been assigned since August 2016, and drafted a resignation memo that stated as follows: "I'm giving my notice due to things not being worked out. I love my job, but unfortunately being no option I can't work here." Ms. Blozvich delivered the note and her key card to Ms. Rasmussen at the front desk of the E.C.C. Ms. Rasmussen then left around 9:00 a.m. from a shift that was scheduled to last

into the afternoon. Ms. Blozvich's decision to leave the employment was not based on advice from a licensed medical or mental health professional.

Ms. Blozvich did not return to the employment. On April 27, six days after Ms. Blozvich had tendered her resignation, Ms. Blozvich sent an email message to Ms. Rasmussen in which she thanked Ms. Rasmussen for the assistance Ms. Rasmussen had provided earlier in the employment. Ms. Blozvich asserted that Ms. Rasmussen had not listened to her side of the story concerning the most recent strife with Ms. Waddell. Ms. Blozvich acknowledged that she had not been fired, but asserted that her "job" had been taken from her.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:
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> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

> Separation because of illness, injury, or pregnancy.
> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.
> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work–related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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).

The weight of the evidence in the record establishes a voluntary quit on April 21, 2017 without good cause attributable to the employer. Ms. Blozvich quit by drafting a written notice that she was quitting, through delivering that quit notice and her key to the facility to the employer, by leaving the facility hours before the scheduled end of her shift, by failing to report for work thereafter, and by failing to make additional contact with the employer until six days later. Ms. Blozvich's decision to quit the employment was not based on advice from a licensed and practicing physician or mental health professional. It was not medically necessary for Ms. Blozvich to leave the employment. The change in assignment did not present a risk of serious physical or mental harm. The temporary change in assigned room did not constitute a substantial change in the conditions of the employment within the meaning of the law. Ms. Blozvich had previously worked in other rooms on occasion. The change from the two-year-old room to the three-year-old room involved a change in the assigned group of children, but involved similar duties. Ms. Blozvich's assertion that she could not bond with another group of children is insufficient to establish good cause for the quit. At the time Ms. Blozvich quit, the upcoming work assignment had her working with two-year-olds and three-year-olds for all but

one of the upcoming work days. The exception was the day when the employer had Ms. Blozvich assigned to work with four-year-olds. Though that, and the temporary floater status, involved changes in the conditions of the employment, they were not substantial changes within the meaning of the law.

Because the administrative law judge concludes that Ms. Blozvich voluntarily quit for personal reasons and without good cause attributable to the employer, Ms. Blozvich is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Blozvich must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The May 25, 2017, reference 02, decision is affirmed. The claimant voluntarily quit the employment on April 21, 2017 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 ten 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

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