IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DAKOTA M HIGGINS
Claimant

LITTLE LEARNERS CHILD CARE CENTER
Employer

APPEAL NO. 11A-UI-02752-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/14/10
Claimant: Appellant (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Dakota Higgins filed a timely appeal from the March 2, 2011, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on March 29, 2011. Claimant participated. Janet Anderson, co-owner, represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether Ms. Higgins' 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: The employer operates a licensed daycare facility. The facility is licensed for 45 children. Dakota Higgins was employed by Little Learners Child Care Center as a full-time child care provider in the employer's infant room. Ms. Higgins started the employment in October 2010 and last performed work for the employer on Friday, December 3, 2010. Ms. Higgins has chronic back problems that include a history of one or more ruptured disks. Ms. Higgins uses a tens unit, but denies it is for pain management. Instead, she asserts it is to reduce swelling. Ms. Higgins has been instructed by her doctor to wear a back brace, to ice her back every two hours, and to use the tens unit. Ms. Higgins' back problems are non-work-related and date from a pregnancy in 2007. Ms. Higgins' duties in the infant room required that she lift and carry the infants. Toward the end of the employment, the employer noted that Ms. Higgins was at time in pain as she performed her duties and that this affected the tone of her interactions with other staff. During the work week of November 29, 2010 through December 3, 2010, the employer had Ms. Higgins stay home a few days, so that her back could heal.

On Sunday, December 5, 2010, the employer sent a text message to Ms. Higgins with a part-time work schedule. Ms. Higgins had been a full-time employee up to that point. Ms. Higgins had not requested to go part-time. The employer wanted Ms. Higgins to go to a part-time "float" position until some indefinite point in the future and then return to the full-time position in the infant room. Ms. Higgins received public assistance with child care expenses. A condition of that assistance was that Ms. Higgins work at least 28 hours per week. Ms. Higgins was not interested in part-time work because it would disqualify her for public assistance and she would no longer be able to afford child

care for her children. The part-time schedule proposed by the employer was to go into effect the work week of December 6, 2010.

Ms. Higgins did not appear for work or contact the employer on December 6, 2010. During the afternoon of December 6, 2010, Co-owner Janet Anderson exchanged text messages with Ms. Higgins. Ms. Anderson proposed that Ms. Higgins become the "floater person." Ms. Higgins responded with a text message explaining that the Department of Human Services would not provide her with child care assistance if she worked less than 28 hours per week. Ms. Higgins told Ms. Anderson that she could not work for the employer if the work was not full-time. Ms. Anderson then asked Ms. Higgins whether that meant she was quitting. Ms. Higgins responded that she appreciated the offer of part-time work, but that she was going to look for something different because her DHS worker would not allow her to work part-time. Ms. Higgins added that she was "looking at going back to school."

Ms. Higgins' doctor had not recommended that she separate from the employment. Ms. Higgins had not provided the employer with any medical documentation concerning her back issues.

Ms. Higgins did not establish a claim for unemployment insurance benefits until January 16, 2011. Since then, Ms. Higgins has looked for full-time time work in the Algona and Emmetsburg area. Ms. Higgins has a car and is willing to commute 20 miles one way for a position. Ms. Higgins has made two or three job contacts per week. Ms. Higgins is interested in full-time work, but is willing to consider a combination of part-time positions that get her to full-time hours.

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).

The evidence in the record indicates that Ms. Higgins voluntarily quit the employment on December 6, 2010 in response to significant changes in the conditions of the employment. The significant changes in the employment were the unsolicited reduction in work hours from full-time to part-time, the corresponding reduction in pay, and the associated loss of public assistance for child care expenses. Ms. Higgins reasonably concluded that the offered work hours would preclude her from maintaining essential public assistance with her child care expense. Ms. Higgins' voluntary quit was for good cause attributable to the employer. Ms. Higgins is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

Iowa Code section 96.4-3 provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
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> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a and (2) provide:

> Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.
>
> (1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.
>
> a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.
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> ….
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> (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not

> mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The administrative law judge concludes there is insufficient evidence in the record upon which to base a conclusion regarding Ms. Higgins' ability to work and, therefore, her availability for work. Ms. Higgins has presented no medical evidence whatsoever concerning a significant back problem. Ms. Higgins' testimony during the hearing regarding the need to use the brace, the need to ice her back, and the need to use the tens unit all point to a significant health issue that might impact on her ability to perform work. The administrative law judge does not doubt Ms. Higgins' assertion that she has been looking for work in earnest since she established the claim that was effective January 16, 2011. The administrative law judge concludes that this matter needs to be remanded to the Claims Division so that Ms. Higgins' medical issues can be further investigated and her ability to perform work may be appropriately determined through consideration of evidence that will include medical documentation of her health state on or after January 16, 2011.

DECISION:

The Agency representatives March 2, 2011, reference 03, 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.

This matter is remanded to the Claims Division for determination of the claimant's ability to work and availability work since January 16, 2011. That inquiry and determination should include review of medical documentation concerning the claimant's health status.

_____
James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/kjw