IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMES A MCCLINTON
Claimant

HY-VEE INC
Employer

APPEAL NO. 14A-UI-08085-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/29/14
Claimant: Appellant (4-R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

James McClinton filed a timely appeal from the July 30, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on August 27, 2014. Mr. McClinton participated. Sabrina Bentler of Corporate Cost Control represented the employer and presented testimony through Sheena Murray and Jeanette Long. The hearing in this matter was consolidated with the hearing in appeal number 14A-UI-08086-JTT. The administrative law judge took official notice of the agency's administrative record of wages that the claimant's base period employers reported to Iowa Workforce Development as wages paid to the claimant.

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: James McClinton was employed by Hy-Vee as a part-time night stocker from 2010 until June 25, 2014, when he voluntarily quit. Mr. McClinton's usual work hours were from 10:00 or 11:00 p.m. to 7:00 a.m. Mr. McClinton provided the employer with two weeks' notice of his intention to quit the employment. At the time of the notice, Mr. McClinton told the employer that he was leaving the employment to relocate to Florida and that he needed to undergo surgery. Mr. McClinton did indeed undergo surgery on July 1, 2014 to have tissue removed from the inside of his bladder and his doctor took him completely off work for a month following the surgery. Mr. McClinton has not yet relocated to Florida.

Though Mr. McClinton did not cite a reduction in work hours as the reason for leaving the employment when he gave his quit notice to the employer, this was a factor in his decision to leave the employment. Mr. McClinton did not reference the reduction in work hours when he gave his quit notice, because by that time he had accepted that the reduction in work hours was a permanent condition of his employment. Mr. McClinton had previously gone to the employer to express concern about the reduction in his work hours. When Mr. McClinton started in the

employment, he worked three 8-hour shifts per week. In October 2013, the employer started to schedule Mr. McClinton for only two 8-hour shifts per week. At the start of 2014, the employer further reduced Mr. McClinton's scheduled work hours. The employer utilizes a Monday through Sunday weekly work schedule. Mr. McClinton's scheduled work hours in 2014 were as follows:

Week end date (Sunday)	Hours	Week end date (Sunday)	Hours
1/5/14	0	4/13/14	7
1/12/14	22	4/20/14	0
1/19/14	8	4/27/14	0
1/26/14	0	5/4/14	8
2/2/14	8	5/11/14	7
2/9/14	8	5/18/14	0
2/23/14	0	5/25/14	6
3/2/14	0	6/1/14	0
3/9/14	7	6/8/14	0
3/16/14	8	6/15/14	8
3/30/14	14	6/22/14	0

In April, after the employer had posted two weekly schedules without providing any work hours for Mr. McClinton, Mr. McClinton contacted the employer to see whether he had been discharged from the employment. The employer had not discharged Mr. McClinton. Mr. McClinton's quit notice followed two consecutive weeks in June when the employer gave him no hours on the work schedule.

Workforce Development records indicate that the quarterly wages that Hy-Vee reported to the agency as wages paid to Mr. McClinton dropped substantially during the first quarter of 2014. For the second quarter of 2013, the employer reported having paid $1,015.00 in wages to the claimant. For the third quarter of 2013, the employer reported having paid $1,092.00 in wages to the claimant. For the fourth quarter of 2013, the employer reported had having paid $1,620.00 in wages to the claimant. For the first quarter of 2014, the employer reported having paid $723.00 in wages to the claimant. For the second quarter 2014, the employer reported having paid $645.00 in wages to the claimant.

At the same time Mr. McClinton worked for Hy-Vee, he also had part-time employment with Kelly Services and North Iowa Area Community College.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code § 96.5-1-e 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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> e. The individual left employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of the individual's family to a place having a different climate, during which time the individual shall be deemed unavailable for work, and notwithstanding during such absence the individual secures temporary employment, and returned to the individual's regular employer and offered the individual's services and the individual's regular work or comparable work was not available, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(2) 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 § 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 § 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:
>
> (2) The claimant moved to a different locality.

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 evidence in the record indicates multiple reasons for the voluntary quit. The weight of the evidence indicates that the two primary reasons for the quit were the reduction in work hours and Mr. McClinton’s need to undergo and recover from surgery. The weight of the evidence indicates that Mr. McClinton did not have plans to immediately relocate to Florida. If the sole

basis for the separation had been plans to relocate to Florida, then the separation would be without good cause attributable to the employer. The weight of the evidence indicates that the future plans to relocate were not a primary basis for separating from the employment.

With regard to the medical issue, the weight of the evidence indicates that Mr. McClinton did indeed have a bonafide need to undergo surgery for a non-work related medical issue and was doing so upon the advice of a licensed and practicing physician. Mr. McClinton also had a bonafide need to recover from the surgery. In order to be eligible for benefits based on the medical separation, Mr. McClinton would have returned to the employment after recovering from his medical condition, present proof to the employer that he had recovered, ask for his job back, and be denied further employment by Hy-Vee. Mr. McClinton has never returned to Hy-Vee after his recovery to request his job back.

With regard to the reduction in work hours, the evidence in the record does indeed indicate a substantial reduction in the number of work hours the employer provided to Mr. McClinton. That substantial change is documented in the quarterly wage reports that the Hy-Vee provided to Iowa Workforce Development. The most recent substantial change went into effect in January 2014. Since that time, there were three instances in which the employer posted two consecutive work schedules that provided no work hours for Mr. McClinton and 10 weeks total during which the employer provided Mr. McClinton with no work hours. By electing to remain in the employment for half a year after the reduced work schedule went into effect, Mr. McClinton essentially acquiesced in the change in the conditions of his employment.

Based on the evidence in the record and the applicable law, the administrative law judge concludes that the voluntary quit cannot be deemed to be for good cause attributable to the employer. Accordingly, Mr. McClinton is disqualified for benefits *based on the base period wage credits earned from the Hy-Vee employment* 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.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Though Mr. McClinton is not eligible for benefits based on the wages from Hy-Vee, he remains otherwise eligible for benefits provided he meets all additional eligibility requirements. This matter will be remanded to the Benefits Bureau for redetermination of Mr. McClinton's eligibility for reduced benefits based on base period wage credits from employers other than Hy-Vee.

DECISION:

The claims deputy's July 30, 2014, reference 01, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits based on wages from Hy-Vee until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant remains otherwise eligible for benefits, provided he meets all additional eligibility requirements. The employer's account shall not be charged.

This matter is remanded to the Benefits Bureau for redetermination of the claimant's eligibility for reduced benefits based on base period employment other than Hy-Vee.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs