

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEANNA M OBERMEYER
Claimant

APPEAL NO. 13A-UI-08649-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEVELOPMENTAL SERVICES OF IOWA
Employer

OC: 06/30/13
Claimant: Respondent (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 23, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was started on August 30, 2013 and completed on September 3, 2013. Claimant Deanna Obermeyer participated. Jennifer Bogacz represented the employer. Exhibits One and Three through Eight were received into evidence.

ISSUE:

Whether Ms. Obermeyer's voluntary quit was for good cause attributable to the employer. It was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Deanna Obermeyer was employed by Developmental Services of Iowa as a full-time Direct Support Professional from November 2011 until June 26, 2013, when she voluntarily quit due to change in the work hours the employer had available for her. From the time she started the employment until March 2013, Ms. Obermeyer worked Sunday through Thursday, 7:00 a.m. to 3:00 p.m. In March 2013, the employer changed Ms. Obermeyer's work hours to Tuesday through Saturday, 7:00 a.m. to 3:00 p.m.

Ms. Obermeyer has two minor children, ages seven and five. Ms. Obermeyer's daycare expenses for Monday through Friday were state subsidized. Ms. Obermeyer was solely responsible for her child care expenses on Saturdays and Sundays. Ms. Obermeyer's weekend child care expense was \$30.00 per day.

On June 17, 2013, the employer notified Ms. Obermeyer that she would not be allowed to continue with her current work schedule. The employer had decided to staff the home where Ms. Obermeyer worked with a supervisor and decided to change Ms. Obermeyer's work schedule to accommodate the supervisor's need for work hours at the home. On June 17, the employer offered Ms. Obermeyer three proposed work schedules. Two of the three proposed work schedules involved a change in shift. One of those involved Ms. Obermeyer working from 3:00 p.m. to 11:00 p.m. and the other involved Ms. Obermeyer working from 11:00 p.m. to

7:00 a.m. The third proposed schedule involved Ms. Obermeyer working Friday through Tuesday, 7:00 a.m. to 3:00 p.m. Ms. Obermeyer declined all three work schedules. The 7:00 a.m. to 3:00 p.m., Friday through Tuesday, work schedule would require Ms. Obermeyer to pay for two weekend days of daycare, whereas she had previously only been obligated to pay for one weekend day of daycare. Rather than accept the proposed change in schedule, Ms. Obermeyer requested to go to on-call status and the employer approved that change.

On June 21, the employer contacted Ms. Obermeyer to propose yet another work schedule. This time the employer proposed that Ms. Obermeyer work 7:00 a.m. to 3:00 p.m. on Mondays, Thursdays, Fridays, and Saturdays. This would drop Ms. Obermeyer to part-time status by eliminating one eight-hour shift per week. Ms. Obermeyer's wage was \$9.27 per hour, so the loss of gross wages would total \$74.16, one-fifth of Ms. Obermeyer's weekly wages. The employer did not mention having Ms. Obermeyer work other shifts or at other houses to make up the lost shift. Ms. Obermeyer was concerned that client the employer wanted her to work with was going to lose housing support within 30 days and that she would be back in the same position, facing another change in her work hours at that time. Ms. Obermeyer declined the proposed schedule and voluntarily separated from the employment.

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. Obermeyer's voluntary quit was prompted by a substantial change in the established conditions of the employment. The June 17, 2013 proposed changes in the established work hours would have entailed a wholesale change in shift or a change in working days that would have doubled Ms. Obermeyer's weekend child care expense. The June 21, 2013 proposed change would have decreased Ms. Obermeyer's work hours and wages by one-fifth. Ms. Obermeyer promptly resigned in lieu of acquiescing in the changed conditions. Ms. Obermeyer voluntarily quit the employment with good cause attributable to the employer. Accordingly, Ms. Obermeyer is qualified for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The agency representatives July 23, 2013, reference 01, decision is affirmed. 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

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