

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DELANEY HOHENTHANER
Claimant

MERIT LOGISTICS, LLC
Employer

APPEAL 20A-UI-08195-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Delaney Hohenthaner filed an appeal from a July 15, 2020 (reference 01) unemployment insurance decision that denied benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for August 24, 2020. Hohenthaner appeared and testified. No one appeared on behalf of the employer, Merit Logistics, LLC ("Merit"). Exhibits A through G were admitted into the record. I also took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

Hohenthaner is uncertain when she commenced her employment as a box thrower with Merit. She believes she started working for Merit sometime in 2020. Hohenthaner worked for Merit an average of twenty hours per week. In April 2020, her immediate supervisor was Jeff Whiten.

During the hearing, Hohenthaner testified she did not quit and she was not discharged or laid off. In her appeal letter, Hohenthaner indicated she had a transportation issue, she was concerned about Covid-19, she heard through third parties that she had been fired, and that she believed she had been laid off.

A representative from Iowa Workforce Development issued a decision, reference 01, on July 15, 2020, finding Hohenthaner voluntarily quit her employment with Merit without good cause on April 29, 2020.

Hohenthaner produced a partial text message she said was sent on April 28, 2020, which provides "don't come in tomorrow." The text does not contain the name of the sender. She did remark at the end "Why wtf I need hours asshole." (Ex. A) Hohenthaner testified Whiten sent the text to her.

Hohenthanner testified Sisto, a boss, sent her a text on April 28, 2020, telling her she would need to work third shift. (Ex. B) Hohenthanner responded “No I’m not working third” and she received a response, “Well, thats [sic] all you got.” (Ex. B) Hohenthanner replied, “I can’t. Wtf dude.” (Ex. B) Hohenthanner received a response “Ricky and Jeff don’t want you.” (Ex. B) Hohenthanner reported she did not have transportation to work the third shift.

Hohenthanner testified she did not go to work on April 29, 2020, April 30, 2020, or for several weeks. Hohenthanner reported she was uncertain when she returned to work. Hohenthanner returned to Merit sometime after April 29, 2020. Hohenthanner does not recall when she returned to work, but noted she worked 1.75 hours on June 15, 2020.

Hohenthanner produced a text message she reported was from May 6, 2020 and May 10, 2020, discussing Covid-19. (Exs. C, D) There is no mention of Covid-19 before these text messages. Hohenthanner did not testify about any concerns related to Covid-19 during her employment. Hohenthanner testified her managers harassed her about her weight and did not want her assigned to their shifts.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual “shall be disqualified for benefits, regardless of the source of the individual’s wage credits:If the individual has left work voluntarily without good cause attributable to the individual’s employer, if so found by the department.” The Iowa Supreme Court has held a “voluntary quit” means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer.” *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires “an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.” *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). “Good cause” for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm’n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

871 Iowa Administrative Code 24.25(1) and (21) provide:

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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(1) The claimant’s lack of transportation to the work site unless the employer had agreed to furnish transportation.

24.25(21) The claimant left because of dissatisfaction with the work environment.

871 Iowa Administrative Code 24.26(1) and (4) also provide:

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:

24.26(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.

24.26(4) The claimant left due to intolerable or detrimental working conditions.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Serv.*, 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. Emp't Appeal Bd.*, 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. Emp't Appeal Bd.*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in this case supports that on April 29, 2020, Hohenthanner did not accept the third shift assignment due to a lack of transportation. There was no evidence Merit agreed to furnish her with transportation. Hohenthanner testified she did not agree to work third shift and that she had been hired to work second shift. There was no evidence Merit reduced her hours or pay, rather, the problem was a lack of transportation, which is not a reason attributable to Merit.

Hohenthanner also testified the managers at Merit harassed her about her weight and did not want her assigned to their shifts. Weight is not a protected class under the Iowa Civil Rights Act. I do not find Hohenthanner provided any specific examples of actions taken against her by supervisors that would lead a reasonable person to believe her working conditions were intolerable or detrimental where a reasonable person would feel compelled to quit. Moreover, at some point she returned to work. I find, after carefully considering the evidence Hohenthanner voluntarily quit her job without good cause attributable to Merit on April 29, 2020. Benefits are denied.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 15, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is affirmed. Claimant voluntarily quit her employment with the employer on April 29, 2020. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after her separation date, and provided she is otherwise eligible.

Pandemic Unemployment Assistance ("PUA") Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance ("PUA") that may provide up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation ("FPUC") program if the individual is eligible for PUA benefits for the week claimed. The FPUC additional \$600 payment per week ends as of July 25th in Iowa. This means the \$600 weekly additional benefit will stop

and at this time, no extension or change to the program has been made by Congress at this time. This does mean that you will see a corresponding decrease in your weekly benefit amount. The FPUC payments are not a state benefit and Iowa is unable to make any changes to the availability of this benefit. If a change takes place to this benefit in the future, IWD will share on the IWD website and social media. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below:

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance ("PUA"). **You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



Heather L. Palmer
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August 26, 2020
Decision Dated and Mailed

hlp/scn