

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA M PETERSEN
Claimant

APPEAL NO. 12A-UI-14747-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLIENT COMMUNITY SERVICES INC
Employer

OC: 11/18/12
Claimant: Respondent (5)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 10, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 16, 2013. Claimant Linda Petersen participated and presented additional testimony through Peggy Monier. Trinity Harig, Program Coordinator, represented the employer and presented additional testimony through Katha Kruger, Program Supervisor.

ISSUE:

Whether Ms. Petersen separated from the employment for reason that would disqualify her from unemployment insurance benefits. The administrative law judge concludes that Ms. Petersen voluntarily quit for good cause attributable to the employer in response to a substantial change in the conditions of the employment, namely the addition of overnight shifts.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a social services agency that provides 24-hour Home and Community-Based Services to disabled persons. Linda Peterson started her employment in 2008 and worked as a part-time direct support professional until November 14, 2012, which she voluntarily quit in response to a change in her work hours. Throughout the employment, Ms. Petersen's work hours were 3:45 p.m. to 8:30 p.m. four nights per week and a weekend shift from 8:00 a.m. to 8:00 p.m. Ms. Petersen's immediate supervisor was Katha Kruger, Program Supervisor.

At the end of October 2012, the employer notified the Direct Support Professionals, including Ms. Petersen, that the employer was implementing a new master work schedule. As part of the new work schedule, each employee would be required to work a minimum of two overnight shifts per month. The overnight shifts would be from 3:45 p.m. to 8:30 a.m. Mr. Petersen had not worked an overnight shift during the entire course of her employment and notified the employer that she would not work overnight shifts. Ms. Petersen was able to get a coworker to cover one of the overnight shifts that the employer scheduled her to work in November 2012. The employer expected Ms. Petersen to appear for an additional overnight shift scheduled for November 16, 2012. The employer's idea of working with Ms. Petersen to address her

concerns about the addition of overnight shifts was to have her come in prior to November 16 to shadow an overnight shift. The employer was short-staffed and was not going to back down from its position that Ms. Petersen would have to work overnight shifts. Ms. Petersen would not agree to work overnight shifts. Instead, Ms. Petersen delivered her keys to Ms. Kruger on November 14.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The weight of the evidence the record establishes that Ms. Petersen voluntarily quit on November 14 when she delivered her keys to the employer in the context of her refusal to work overnight shifts.

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.

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 weight of the evidence indicates that the employer did in fact mandate that Ms. Petersen and other employees take on overnight shifts effective November 1, 2012. The employer's decision to add overnight shifts to Ms. Petersen's work schedule after Ms. Petersen had gone for years in the employment without working overnight shifts constituted a substantial change in the conditions of employment. Ms. Petersen voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Petersen is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representatives December 10, 2012, reference 01, decision is modified as follows. The claimant voluntarily 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

jet/css