IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAMELA M BREEDING
Claimant

THOMAS L CARDELLA & ASSOCIATES INC
Employer

APPEAL NO. 20A-UI-04183-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Pamela Breeding filed a timely appeal from the May 8, 2020, reference 01, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Breeding voluntarily quit on February 15, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 3, 2020. Ms. Breeding participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO and KPYX).

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: Pamela Breeding was employed by Thomas L. Cardella & Associates, Inc. as a full-time customer service representative from August 2018 until February 15, 2020, when she voluntarily quit. Ms. Breeding worked at a call center in Ottumwa. Throughout the employment, Ms. Breeding work hours were 8:30 a.m. to 4:30 p.m., Monday through Friday. Ms. Breeding would also work 8:00 a.m. to noon on Saturdays as needed. During the first four months of the employment, Ms. Breeding was assigned to the Spectrum account. The work involved calling customer or prospective customers to sell internet service. Many times the person Ms. Breeding called would terminate the call as soon as Ms. Breeding announced she was calling on behalf of Spectrum. Ms. Breeding did not do well in the Spectrum duties. In January 2019, Ms. Breeding switched to the Mr. Cooper account. The Mr. Cooper account duties involved assisting customers with mortgage questions and otherwise servicing mortgage accounts. Ms. Breeding would spend a portion of the day answering inbound calls from Mr. Cooper customers or prospective customers. Later in the shift, Ms. Breeding would make outbound calls. During the last two or three months of the employment, the Mr. Cooper work involved inbound calls only. Ms. Breeding base pay was $8.50 per hour, but she could earn up to 9.25 if she performed well enough to earn bonus pay.

At the end of February 2020, the call center director announced that the company was moving the first shift Mr. Cooper worked to its Cedar Rapids office and that Ottumwa employees working first shift on the Mr. Cooper account would need to move to the Spectrum account. The work hours and pay were to remain the same. Ms. Breeding did not relish the thought of returning to the Spectrum account and asked whether the employer could make available second shift work on the Mr. Cooper account. The employer agreed to consider it. However, Ms. Breeding also had a problem with moving to second shift work, in that she was her seven and nine-year-old granddaughters' guardian and the evening hours would conflict with caring for the children. Ms. Breeding planned to acquiesce in returning to the Spectrum duties.

On February 15, 2020, Ms. Breeding was not feeling well and asked her Shift Supervisor, Kelly (last name unknown), if she could go home early. Ms. Breeding was dealing with urinary tract infection and a fever. Ms. Breeding had needed to use the restroom frequently. The shift supervisor was not empathetic. When Ms. Breeding made her request to leave, the shift supervisor shifted the focus to herself and stated that she came to work daily even she was in constant knee pain. The shift supervisor told Ms. Breeding that if she needed to leave early that day she should take all of the things off her desk when she left. Though Ms. Breeding asserts that she interpreted this directive as a discharge her from the employment, that was not the basis for the directive and Ms. Breeding knew as much at the time. The employer had previously announced that employees moving to the Spectrum would need to vacate their current workstation and relocate to the Spectrum area of the call center. Ms. Breeding knew that all employees were expected to relocate their personal effects within the next week or so, but that no one had done that up to that point. Ms. Breeding preferred to keep her Mr. Cooper resources at her same workstation until the moment she was no longer working on the Mr. Cooper account. Ms. Breeding took her materials with her when she left early on February 15, 2020.

Ms. Breeding elected not to return to the employment. One factor in her decision was the prospective change back to the Spectrum duties. Other factors were the general work environment with copious and distracting ambient banter and a crude coworker who had started sitting across from Ms. Breeding a one and half to two months earlier. Though Ms. Breeding had kept her Mr. Cooper resources and her personal effects at a particular workstation, there were no assigned workstations in the call center. The crude coworker who starting sitting across from Ms. Breeding would carry on loud, non-work related conversations with someone who sat behind Ms. Breeding. Ms. Breeding was also subjected to the same crude coworker expounding about his "big dick." Ms. Breeding had observed that this coworker habitually reeked of marijuana. Ms. Breeding was sad at work on February 13, 2020. The crude coworker noticed this and asked Ms. Breeding what her problem was. When Ms. Breeding replied it was none of his concern, the crude coworker responded with, "Dope is not any good in this town?" The comment implied that Ms. Breeding was a drug user. Ms. Breeding had spoken to the shift supervisor about the coworker and the shift supervisor had indicated she would handle it. However, Ms. Breeding had a similar experience with this coworker on a regular basis.

Ms. Breeding established an original claim for unemployment insurance benefits that was effective March 15, 2020. Iowa Workforce Development set her weekly benefit amount at $247.00. Iowa Workforce Development approved $1,729.00 in benefits for the seven weeks between March 15, 2020 and May 2, 2020. The first two weeks of benefits were offset against a prior overpayment. The remaining give weeks of benefits were paid to Ms. Breeding. Iowa Workforce Development also paid $3,000.00 in Federal Pandemic Unemployment Compensation to Ms. Breeding for five weeks between March 29, 2020 and May 2, 2020.

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:
>
> 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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

Iowa Administrative Code rule 871-24.26(1) provides as follows:

> 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 establishes a voluntary quit that was for good cause attributable to the employer, based on intolerable and detrimental working conditions. Ms. Breeding asserted early in her testimony that she was discharged. Further questions and testimony revealed that assertion to be without merit. The quit was not based on a substantial change in the conditions in the employment. The only impending change was the switch from one account to another,

which did not constitute a substantial change within the meaning of the law. The quit was based in part on repeated harassment, including sexual harassment, perpetrated by a coworker. The employer failed to take reasonable and appropriate steps to end the harassment in response to Ms. Breeding's request for assistance. The employer communicated a level of disregard that led Ms. Breeding to reasonably conclude the employer would continue to tolerate the harassment. These circumstances were sufficient to establish intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment. The quit was effective February 15, 2020. Ms. Breeding is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The May 8, 2020, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. The quit was effective February 15, 2020. 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

June 25, 2020
Decision Dated and Mailed

jet/scn