

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEANN D MCCALLISTER
Claimant

APPEAL NO. 17A-UI-00890-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROSS RIVER FARM SERVICES INC
Employer

OC: 12/25/16
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Leann McCallister filed a timely appeal from the January 23, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. McCallister had voluntarily quit on December 21, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 14, 2017. Ms. McCallister participated. Nicole Kruschke represented the employer. Exhibits 1, 2, A and B were received into evidence.

ISSUE:

Whether Ms. McCallister'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: Leann McCallister was employed by Ross River Farm Services, Inc. as office manager from 2011 until December 21, 2016, when she voluntarily quit the employment, effective immediately. Ms. McCallister's hourly wage was \$15.00. Ms. McCallister provided the employer with a resignation memo on December 21, 2016.

Ms. McCallister cites a number for reasons for her decision to leave the employment. Effective November 21, 2016, the employer cut Ms. McCallister's full-time work hours to 22-25 per week so that the employer could provide another employee with additional work hours during a slow business period. Prior to this change, Ms. McCallister had been full-time since the start of the employment. In response to the impending cut in work hours, Ms. McCallister obtained additional part-time employment with Saxby Enterprises. Ms. McCallister began her part-time employment at Saxby Enterprises on November 19, 2016. Ms. McCallister submitted her December 21, 2016 resignation to Ross River Farm Services in response to being offered a full-time position at Saxby Enterprises. After Ms. McCallister had separated from Ross River Farm Services, and after she began her full-time hours at Saxby Enterprises, Saxby Enterprises decided not to continue Ms. McCallister's employment.

Another factor in Ms. McCallister's decision to leave Ross River Farm Services involved work-related stress. Ms. McCallister was responsible for communicating directives from the business owners to other employees. The employer held Ms. McCallister accountable when other employees did not comply with the directives the employer communicated through Ms. McCallister. Ms. McCallister found it difficult to get other employees to heed and follow the directives she communicated. Two of the employees with whom Ms. McCallister experienced interpersonal conflict were office assistant Nicole Kruschke and crew member Brett McAfee. The employer had cut Ms. McCallister's hours to provide additional work hours to Ms. Kruschke. Ms. Kruschke and/or Mr. McAfee believed that Ms. McCallister was responsible for a rumor that they were in a romantic relationship. Ms. McCallister consulted a doctor regarding her work-related stress. The doctor did not advise Ms. McCallister to leave the employment. Instead, the doctor left that decision to Ms. McCallister.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Code § 96.5-1-d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 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 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).

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 evidence in the record establishes a voluntary quit for good cause attributable to the employer, based on a substantial change in the conditions of the employment. The substantial changes in reduction in work hours and the corresponding reduction in pay. The witnesses agree that Ms. McCallister's part-time work hours at Ross River Farm Services did not exceed 25 per week. This 15-hour, or more, reduction in weekly work hours brought with at least a \$225.00 reduction in weekly wages. This amounted to a 37.5 percent reduction in Ms. McCallister's weekly wage. Ms. McCallister's quit, exactly one month after the quit took effect, did not involve unreasonable delay and was not acquiescence in the changed conditions. Ms. McCallister's decision to obtain another job to make up for the lost hours also indicates she was not acquiescing in the loss of income.

The weight of the evidence establishes that a substantial factor in the decision to leave the employment at Ross River Farm Services was Ms. McCallister's acceptance of other full-time employment. A quit for such reasons would not disqualify Ms. McCallister for unemployment insurance benefits. However, because the quit was not *solely* based on the acceptance of other employment, the quit does not relieve the employer of liability for benefits.

The weight of the evidence does not establish good cause attributable to the employer in connection with the purported medical issue or the purported intolerable and detrimental work environment. A doctor did not advise Ms. McCallister to leave the employment due to a medical

condition. The evidence fails to establish a medical condition that necessitated departure from the employment to avoid serious harm. The interpersonal conflict and inherent pressures of delegated authority did not rise to the level of intolerable or detrimental working conditions.

Because the evidence establishes a voluntary quit for good cause attributable to the employer based on the change in the contract of hire, Ms. McCallister is eligible for benefits provided she is otherwise eligible and the employer's account may be charged for benefits paid to Ms. McCallister.

DECISION:

The January 23, 2017, reference 01, decision is reversed. The claimant voluntarily quit the employment on December 21, 2016 for good cause attributable to the employer based on the substantial change in the conditions of the employment. 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/rvs