

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA C HUIZENGA
Claimant

APPEAL NO. 12A-UI-10174-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEATON INC
Employer

OC: 07/22/12
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 16, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 31, 2012. The claimant participated personally. Participating as witnesses for the employer were Kathy Freirichs, Comptroller and Michelle Peska, District Manager.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Linda Huizenga was employed by the captioned employer, doing business as Burger King, from January 17, 2011 until July 20, 2012 when she voluntarily left her employment. Ms. Huizenga was employed as a part-time crewmember and was paid by the hour.

Ms. Huizenga left her employment with Burger King on July 20, 2012 based upon a requirement that was being imposed at that time that all crewmembers have their uniform shirts tucked in while performing services for the company. Although the claimant indicated that this was a serious matter and that she would leave employment if she were forced to adhere to the new rule, the employer elected to require the claimant to follow the rule as it had been mandated by the franchiser.

At the time of hire Ms. Huizenga specifically addressed her need not to tuck her shirt in while working for medical reasons. The manager at that time, Jessica Rose, specifically agreed that the claimant would not be required to tuck her shirt in specifically agreeing that if the claimant wore an apron at work any requirement to tuck the claimant's shirt in would be waived.

Because the matter continued to be a serious concern for the claimant and the condition persisted that prevented the claimant from tucking her shirt in continued, Ms. Huizenga left her employment after the employer was unwilling to waive the new requirement.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes good cause for leaving attributable to the employer. It does.

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.

An individual who voluntarily leaves their employment must first give notice to the employer of their reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

In this matter the evidence in the record establishes that Ms. Huizenga left her employment because the employer was implementing a new rule that required all employees to tuck in their work shirts while performing their duties at the Burger King locations. The new rule change had been mandated by the company's franchising entity, however, the new rule contravened a specific agreement in place between Ms. Huizenga and her employer that was entered at the time of hire.

Because of specific concerns Ms. Huizenga had addressed the tucking in the shirt issue at the time that she was being hired. It had been specifically agreed upon that based upon the claimant's medical/physical reasons the claimant would not be required to tuck her shirt in while performing duties for the company in the future as long as the claimant wore an apron covering that portion of her uniform. On July 20, 2012 Ms. Huizenga continued to follow her portion of the agreement by wearing an apron when working, however, the employer for business reasons was required to unilaterally change this aspect of the claimant's agreement of hire. Because the claimant's reason for initially requesting the accommodation was not a trivial matter and continued to be important to the claimant for medical/physical reasons, Ms. Huizenga left her employment believing that the employer had materially breached the agreement of hire between the parties. The administrative law judge agrees.

The administrative law judge finds the claimant's testimony about the specific agreement between herself and the manager that hired her to be credible and not inherently improbable and notes that prior to leaving Ms. Huizenga raised the same issue with the employer

specifically indicating that it had been previously agreed that she would not be required to tuck in her shirt while working.

Based upon the unique circumstances of this case the administrative law judge concludes that the change in the contract of hire was substantial because the claimant's previous acceptance of employment was conditioned specifically on that issue. Therefore, the administrative law judge concludes that the claimant left employment with good cause that was attributable to the employer. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 16, 2012, reference 01, is reversed. The claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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