IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MEGAN M SIMUNOVIC
Claimant

AGRIPROCESSORS INC
Employer

APPEAL NO. 09A-UI-05712-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/16/08
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Megan Simunovic filed a timely appeal from the March 31, 2009, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on May 7, 2009. Ms. Simunovic participated personally and was represented by attorney James Burns. Laura Althouse, Public Relations/Human Resources Assistant, represented the employer and presented additional testimony through Anthony Brown, Supervisor. Exhibit A was received into evidence.

ISSUE:

Whether Ms. Simunovic'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: Megan Simunovic started working for Agriprocessors on October 12, 2008 as a full-time clerical worker. Ms. Simunovic's work hours in that position were 6:30 a.m. to 5:30 p.m., Monday through Friday, with some additional Sunday work. On November 16, 2008, the production plant temporarily shut down in connection with bankruptcy proceedings and appointment of a trustee to oversee the business.

On December 2, 2008, Elizabeth Billmeyer, Human Resources Manager, recalled Ms. Simunovic to the employment. Ms. Billmeyer recalled Ms. Simunovic to a production position, not the clerical position Ms. Simunovic had previously held. The new position was supposed to be full-time, but did not start out as full-time because the employer lacked sufficient inventory to engage in full-time production. Ms. Simunovic initially worked from 8:30 a.m. to 11:00 a.m. or 8:30 a.m. to 2:00 p.m. At the beginning of February, as production increased, Ms. Simunovic started working 8:30 a.m. to 5:00 p.m. Ms. Simunovic last performed work in the production position on February 19, 2009. On that day, Ms. Simunovic left work before the scheduled end of her shift.

At 10:30 a.m. on February 19, Ms. Simunovic was summoned to a meeting in the supervisors' office. Supervisors Anthony Brown and Peter Stein were present. Mr. Brown had decided to

issue a written reprimand to Ms. Simunovic because she had returned to the production line ten minutes after the scheduled end of her lunch break on February 18. Ms. Simunovic had returned late from lunch break because she was suffering from a gastrointestinal infection, had a bathroom emergency at the end of the lunch break, and was detained in the ladies' room. Mr. Brown knew at the time that Ms. Simunovic had recently been ill. Mr. Brown was displeased with Ms. Simunovic's demeanor when he had confronted her on February 18 about her late return to the production floor. Ms. Simunovic had indicated at that time that she was both sick and pregnant. During the February 19 meeting, Ms. Simunovic provided information regarding her illness and her late return from lunch break on February 18. Mr. Brown issued the reprimand nonetheless.

During the February 19 meeting, Mr. Brown told Ms. Simunovic that the employer would be imposing additional conditions on Mr. Simunovic's employment. Mr. Brown told Ms. Simunovic that due to her pregnancy she would be required to provide a doctor's note indicating any medical restrictions. Mr. Brown indicated that Ms. Simunovic would be placed in a light-duty assignment. Ms. Simunovic told Ms. Brown that she had not requested a light-duty assignment and was able to perform her regular duties.

During the February 19 meeting, Mr. Brown told Ms. Simunovic that from that point forward she would be required to work later than 5:30 p.m., until production ceased. Ms. Simunovic was unable to work past 5:30 p.m. due to necessary special childcare arrangements she had made for one of her children, a two-year-old daughter with autism. Ms. Simunovic had to leave work in time to travel to another community to collect her daughter before the daycare closed at 6:00 p.m. Ms. Simunovic had previously made the employer aware of her child's condition and the special childcare arrangements. The employer had not previously required that Ms. Simunovic work past 5:00 p.m. in the production position or beyond 5:30 p.m. in the clerical position.

During the February 19 meeting, Mr. Brown told Ms. Simunovic that she would not be allowed to leave work earlier than scheduled just because her ride was leaving early. Ms. Simunovic's ride was her boyfriend, Michael Hubbard. The employer had decided to discharge Mr. Hubbard from the employment and carried out the discharge on February 19.

During the February 19 meeting, Ms. Simunovic requested to speak with Elizabeth Billmeyer, Human Resources Manager. Ms. Simunovic asserted that Mr. Brown was discriminating against her based on her pregnancy. Mr. Brown initially denied the request to contact Ms. Billmeyer and told Ms. Simunovic she would have to wait until the end of the production day to speak with Ms. Billmeyer. Later during the meeting, Mr. Stein attempted to contact Ms. Billmeyer, who was not available.

After the meeting ended, Ms. Simunovic returned to the production floor. After the employer discharged Mr. Hubbard, Mr. Hubbard located Ms. Simunovic on the production floor. Ms. Simunovic left with Mr. Hubbard.

On February 20, Ms. Simunovic was not scheduled to work, but contacted Ms. Billmeyer. Ms. Billmeyer agreed that Mr. Brown should not have demanded a doctor's note regarding Ms. Simunovic's pregnancy and the duties she was able to perform. Ms. Simunovic asked to be transferred to another department. Ms. Billmeyer agreed to speak with supervisors to see whether there was anything else available.

On February 22, Ms. Simunovic again contacted Ms. Billmeyer. Ms. Simunovic told Ms. Billmeyer she would not be returning to the production position because of the expectation

that she work beyond 5:30 p.m. Ms. Billmeyer indicated that she was willing to continue searching for another position that would not require Ms. Simunovic to work beyond 5:30 p.m.

Ms. Simunovic spoke to Ms. Billmeyer for the last time on February 26 or 27. At that time, Ms. Billmeyer indicated that the only available position that would not require work beyond 5:30 p.m. was a position in the chicken kill and evisceration area. Ms. Simunovic declined the position because it would expose her to potentially contaminated blood and entrails during her pregnancy. Ms. Simunovic asked about clerical positions in areas she knew lacked necessary clerical staff. Ms. Billmeyer told Ms. Simunovic that the bankruptcy trustee would not approve the payroll expose for such a position.

Ms. Simunovic has provided a note from her doctor dated March 9, 2009. The note indicates that Ms. Simunovic saw the doctor on February 13, 2009 and should have no restrictions based on her pregnancy.

REASONING AND CONCLUSIONS OF LAW:

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.

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 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).

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 Ms. Simunovic voluntarily separated from the employment in response to the changed conditions of employment Mr. Brown announced on February 19. The evidence indicates that Mr. Brown set the negative tone of the meeting. Mr. Brown decided to reprimand Ms. Simunovic for a late return from lunch break due to illness when he knew about the illness. Mr. Brown jumped to the conclusion that Ms. Simunovic's need for bathroom breaks was attributable to her pregnancy, when this was not the case. Mr. Brown demanded a doctor's note with information regarding medical restrictions when Ms. Simunovic had made no request for light-duty work and was able to perform her assigned duties. Mr. Brown continued his heavy-handed approach by denying Ms. Simunovic's request to involve the human resources manager in the disciplinary meeting. Overall, Mr. Brown's conduct appears to have been payback Ms. Simunovic's demeanor on February 18, rather than reasonable steps taken by an employer to discipline an employee for an attendance matter.

It was in this heavy-handed context that Mr. Brown told Ms. Simunovic that she would have to work beyond 5:30 p.m. as needed from that point onward. This directive was in direct contrast to the understanding Ms. Simunovic had with the employer up to that point. Ms. Simunovic had good cause for her need to leave at or before 5:30 p.m. and had made appropriate arrangements with the employer. Mr. Brown's announcement that Ms. Simunovic would have to work beyond 5:30 p.m. was a significant change in the conditions of the employment under the circumstances.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Simunovic voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Simunovic is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Simunovic.

DECISION:

The Agency representative's March 31, 2009, reference 03, decision is reversed. The claimant 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/css