

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINA C HUTTON
Claimant

APPEAL NO. 13A-UI-07333-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAIN MASSAGE THERAPY INC
Employer

OC: 05/12/13
Claimant: Respondent (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 11, 2013, reference 01, decision that allowed benefits. After due notice was issued, an in-person hearing was held on September 17, 2012. Claimant Kristina Hutton participated. Lindsey Wiese represented the employer and presented additional testimony through Kristen Leanhart. Exhibits One, Two and A through H were received into evidence.

ISSUE:

Whether Ms. Hutton's voluntary quit was for good cause attributable to the employer. It was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kristina Hutton was employed by Main Massage Therapy, Inc. as a full-time Retreat Director (manager) from 2011 until May 10, 2013, when she voluntarily quit. Earlier in the employment, the employer had Ms. Hutton open a credit card account for the purpose of purchasing supplies for the employer's business. The employer then failed to make time payment on the account, which resulted in the credit card bank sending a notice to Ms. Hutton that the account was delinquent. The account had over \$1,700.00 on it at the time. Ms. Hutton brought her concerns to the attention of the business owner on May 8, 2013. On May 10, 2013, Ms. Hutton's immediate supervisor, Kristen Leanhart issued three reprimands to Ms. Hutton. Ms. Hutton became concerned that the employer was preparing to discharge her from the employment after she complained about the overdue credit card balance. One of the reprimands was based on Ms. Hutton's decision to direct her complaint about the credit card balance to the business owner, rather than to Ms. Leanhart, even though it had been the business owner who had asked her to open the credit card account.

Near the end of the employment, the employer had also changed Ms. Hutton's compensation package. The employer had substantially reduced her base pay and substantially increased the amount of sales Ms. Hutton would have to make to maintain the same compensation.

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).

871 IAC 24.25(28) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa

Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

The weight of the evidence in the record supports Ms. Hutton's assertion that the employer decided to retaliate against her for bringing her concern about the delinquent credit card balance to the employer's attention. The weight of the evidence also supports Ms. Hutton's assertion that the credit card was obtained in her name personally and that she was liable for the account if the employer did not pay the balance due. The credit card arrangement in and of itself constituted a detrimental working condition that would have prompted a reasonable person to sever the employment relationship. The weight of the evidence indicates that the three reprimands issued to Ms. Hutton on May 10, 2013 were not run-of-the-mill reprimands. They instead represented, as Ms. Hutton asserts, the employer's retaliation and attempt to position Ms. Hutton for discharge. Ms. Hutton's voluntary quit was not a quit in response to reprimands in the usual sense. The evidence further indicates that toward the end of the employment the employer substantially changed the conditions of the employment by reducing Ms. Hutton's base pay and by changing the bonus structure in a way that would force Ms. Hutton to make increased sales to maintain the same income.

Ms. Hutton's voluntary quit was for good cause attributable to the employer. Accordingly, Ms. Hutton is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The agency representatives June 11, 2013, reference 01, decision is affirmed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs