

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET A OSWEILER
Claimant

APPEAL NO. 11A-UI-02551-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMANA NORDSTROM INC
SEVEN VILLAGES RESTAURANT
Employer

OC: 02/06/11
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Margaret Osweiler filed a timely appeal from the February 28, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 24, 2011. Claimant participated. Potique Johnson, general manager, represented the employer and presented additional testimony through Chris Benge, restaurant manager. Exhibits One and three through Six were received into evidence.

ISSUE:

Whether Ms. Osweiler'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: The employer operates a hotel with a restaurant. Margaret Osweiler worked as a full-time food and beverage server beginning in 2006. In July 1, 2010, Ms. Osweiler quit the employment, but then was allowed to return to the employment on July 6, 2010 as a "new hire." At that time, the employer made Ms. Osweiler sign an agreement regarding the terms of her new employment. The following appeared as part of that agreement:

You may be asked to work all shifts available and may run on weekends no more every other weekend.

Shifts could range from:

Coffee shop hours

Bqt Hours

And if training some Dining room hours

Upon returning to the employment, Ms. Osweiler primarily worked the daytime coffee shop hours. That is where the best customer tips were. Ms. Osweiler's income was heavily dependent on the amount of customer tips she might receive during a shift. The employer's restaurant was generally slower in the evening and tips were correspondingly significantly less.

Ms. Osweiler did work one evening shift after her return. Ms. Osweiler was also scheduled to assist with banquets.

Ms. Osweiler commenced an approved leave of absence on November 23, 2010. Ms. Osweiler was released to return to work on February 1, 2011. Ms. Osweiler contacted the employer in advance as required to discuss her return to work. Potique Johnson, general manager, and Chris Benge, restaurant manager, advised Ms. Osweiler that her return to work would involve her working primarily evening hours. Ms. Osweiler's significant other had significant medical issues that required Ms. Osweiler's assistance in the evenings. When Ms. Osweiler objected to the change from primarily day shift hours to primarily evening shift hours, the employer took a take-it-or-leave-it approach. When Ms. Osweiler found for certain on February 3, 2011 what her proposed work hours would be, she declined to accept the work hours based on her family's needs and ended her employment.

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.

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 establishes that Ms. Osweiler's established conditions of employment upon her return on July 6, 2010, through her last day worked in November 2010, included primarily day shift coffee shop hours, where tips were greater than during the evening shift. The weight of the evidence indicates that from July to November 2010, Ms. Osweiler primarily worked the day shift hours. The weight of the evidence establishes that the employer significantly changed the conditions of employment as a condition of Ms. Osweiler's return to work at the beginning of February 2011. The significant changes were the change from day shift to evening shift hours and the corresponding reduction in pay. Both changes were detrimental to Ms. Osweiler. The change in hours was detrimental because she had serious family responsibilities that required her presence in the evenings. The proposed change in amount of tips was significant because it meant a significant reduction in pay. Ms. Osweiler separated from the employment in a timely manner, rather than acquiesce in the detrimental changes.

Ms. Osweiler voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Osweiler is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Osweiler.

DECISION:

The Agency representatives February 28, 2011, reference 01, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw