

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NISA D NEIL**  
Claimant

**APPEAL NO. 17A-UI-03473-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROFESSIONAL OFFICE SVCS INC**  
Employer

**OC: 02/26/17**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Nisa Neil filed a timely appeal from the March 21, 2017, reference 02, 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. Neil voluntarily quit on August 31, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 21, 2017. Ms. Neil participated personally and was represented by attorney Stuart Higgins. Rodger Smith represented the employer and presented additional testimony through Patrick Moran. Exhibits 1 and A were received into evidence.

**ISSUE:**

Whether Ms. Neil'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: Nisa Neil was employed by Professional Office Services, Inc., as a full-time Inside Sales Representative from 2012 until August 31, 2016, when she voluntarily quit in response to being reprimanded by the employer. Ms. Neil's immediate supervisor was Gayle Mielke, Sales Support Manager. Ms. Neil's work hours were 8:30 a.m. to 5:00 p.m., Monday through Friday. Patrick Moran, Human Resources Manager, met with Ms. Neil on August 24, 2016 to discuss Ms. Neil's recent non-FMLA related tardiness and to issue a written reprimand. During the meeting, Mr. Moran warned Ms. Neil that her next violation of the attendance policy would result in suspension or discharge from the employment. On August 31, 2016, Ms. Neil notified Mr. Moran at 11:50 a.m. that she was leaving. When Mr. Moran asked for clarification, Ms. Neil told Mr. Moran, "I'm resigning. Working here is just too much and I have had enough. I want to take time to focus on my health." Ms. Neil told Mr. Moran that her quit was effective immediately and that she would leave it to Mr. Moran to notify her supervisor. At the time Ms. Neil voluntarily quit, the employer continued to have the same work available for her.

To the extent that Ms. Neil's decision to leave was based on her health concerns, the decision to quit the employment was not based on advice from a licensed and practicing physician. In 2014, Ms. Neil was diagnosed with breast cancer. In 2015, Ms. Neil underwent a lumpectomy

and was subsequently released by the surgeon to return to work without restrictions. Ms. Neil elected to forego chemotherapy or radiation treatment. Ms. Neil elected instead to focus on managing her stress level with the assistance of her primary care provider. Ms. Neil requested and the employer approved intermittent FMLA leave and continued to be approved for intermittent FMLA leave up to the time she terminated the employment. The reprimand the employer had issued on August 24, 2016 for tardiness had not been based on FMLA-related absences or tardiness. Ms. Neil had not provided the employer with any medical documentation to support medically-based workplace accommodations beyond the intermittent FMLA leave. Prior to resigning, Ms. Neil had not threatened to quit if she was not provided with additional medically-based accommodations.

In late 2015 or early 2016, Ms. Neil was assigned additional sales territory that included the Fort Lauderdale, Florida area. In March 2016, Ms. Neil spoke to Mr. Moran regarding her concern that the portion of her commission that was based on the Fort Lauderdale area was being diminished by customer credits that other staff were authorizing. Ms. Neil's compensation package included a \$16.40 per hour base wage plus a sales commission. Ms. Neil believed her commission was being diminished due to errors made by the Outside Sales Person to whom the Fort Lauderdale Territory had previously been assigned. Mr. Moran forwarded Ms. Neil's concern to a vice president. The company determined that Ms. Moran was receiving the appropriate commission consistent with how the employer compensated other Inside Sales Representatives. Mr. Moran communicated this information to Ms. Neil. Ms. Neil elected to remain in the employment another five months after the matter was addressed. Neither Ms. Neil's hourly wage nor her commission declined during the employment. Indeed, Ms. Neil's commission-based income rose in 2016.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

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.

Iowa Admin. Code r. 871-24.25(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.

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).

Ms. Neil asserts that her voluntary quit was based on intolerable and/or detrimental working conditions and substantial changes in the conditions of the employment. The evidence in the record fails to support those assertions. The employer's enforcement of its attendance policy, including the issuance of the August 24, 2016 written warning was not harassment. The weight of the evidence establishes that the employer was willing to provide reasonable accommodations supported by a bona fide medical need, as indicated by the employer's approval of intermittent FMLA leave. While Ms. Neil's sales territory was enlarged at the end of 2015 or beginning of 2016, the weight of the evidence establishes that Ms. Neil received appropriate compensation for her efforts and neither the wage nor commission declined. In any event, Ms. Neil elected to remain in the employment for five months after the employer

responded to her concern and thereby acquiesced in any perceived changes in the conditions of the employment.

The evidence in the record fails to establish a medical or health basis for the voluntary quit. The evidence fails to establish that the quit was necessary to avoid serious danger to Ms. Neil's health. Ms. Neil had presented no medical evidence to support the assertion that she was compelled to leave the employment for health reasons. The quit was not based on the advice of a licensed and practicing physician.

The weight of the evidence in the record establishes a quit in response to a reprimand. The employer issued the reprimand on August 24, 2016 and warned Ms. Neil at that time of future discipline if her pattern of tardiness continued. Within a week of that reprimand, Ms. Neil elected to abruptly quit the employment in response to the reprimand.

Ms. Neil voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Neil is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Neil must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The March 21, 2017, reference 02, decision is affirmed. The claimant voluntarily quit the employment on August 31, 2016 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs