

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE S HARPER
Claimant

APPEAL NO. 07A-UI-07618-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK SHOP INC
Employer

OC: 07/08/07 R: 04
Claimant: Respondent (2)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Code section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Kwik Shop filed a timely appeal from the August 1, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 22, 2007. Claimant Stephanie Harper participated. Jacqueline Jones of Employers Unity/TALX UC eXpress represented the employer and presented testimony through Jimmy Lewis, Regional Operations Manager, and Rosemary Boyert, Training Supervisor. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant'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: Stephanie Harper was employed by Kwik Shop from September 3, 1998 until June 11, 2007, when she voluntarily quit. Prior to May 18, 2007, Ms. Harper worked full-time as a trainer and as an Assistant Store Manager. Ms. Harper's immediate supervisor concerning her training duties was Training Supervisor Rosemary Boyert. Ms. Harper's immediate supervisor concerning her Assistant Manager duties was the District Advisor. Ms. Harper's fiancé, Kai Brown, also worked for Kwik Shop. Prior to May 18, Mr. Brown was a store manager in the Davenport area.

In early May 2007, Jimmy Lewis, Regional Operations Manager, offered Mr. Brown a promotion to District Advisor. The promotion required Mr. Brown to move the Lincoln, Nebraska area. Mr. Brown asked Mr. Lewis whether the employer would have work for Ms. Harper in the Lincoln, Nebraska area. Mr. Lewis advised Mr. Brown and Ms. Harper that the employer had an open trainer position in the Lincoln area and that the employer would continue to make full-time hours available to Ms. Harper if she joined Mr. Brown in Lincoln, Nebraska. Mr. Brown accepted his promotion and Ms. Harper accepted the offer to transfer to Lincoln, Nebraska, with the same pay and same general hours of employment. Ms. Brown's transfer was effective May 18, 2007.

Ms. Boyert continued to be Ms. Harper's immediate supervisor after Ms. Harper transferred to Lincoln. The employer was in the process of changing its training program in Lincoln. Ms. Boyert assigned Ms. Harper the responsibility of cleaning, stocking, and otherwise preparing the training facility. Ms. Harper traveled to Kansas for additional training. Ms. Boyert made full-time hours available to Ms. Harper, but Ms. Harper opted to work less than full-time hours during her brief time in Lincoln. On multiple occasions, Ms. Boyert contacted the training facility and learned that Ms. Harper had left work early.

Mr. Brown has young children who reside in the Davenport area. After Mr. Brown and Ms. Harper commenced working in the Lincoln, Nebraska area, they concluded they could not afford to live in Lincoln and/or travel to Davenport so that Mr. Brown could spend time with his children. On June 11, Mr. Brown faxed his resignation to Mr. Lewis. In the resignation, Mr. Brown indicated that the Lincoln position was not working out. The resignation did not mention Ms. Harper. Ms. Harper never advised the employer that she was quitting. Ms. Boyert found out that Ms. Harper had quit when Ms. Harper contacted the training facility and learned from other staff that employees were waiting outside the training center for a scheduled training class, but that Ms. Harper was nowhere to be found. Ms. Harper and Mr. Brown quit so that they could return to the Davenport area. At the time Ms. Harper quit, the employer continued to have full-time hours available to her in Lincoln.

Ms. Harper established a claim for unemployment insurance benefits that was effective July 8, 2007 and has received benefits totaling \$1,363.00.

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 greater weight of the evidence in the record indicates that Ms. Harper requested and was granted a transfer to Lincoln, Nebraska. While this represented a significant change in the conditions of the employment, it was a change requested, and acquiesced in, by Ms. Harper. The greater weight of the evidence fails to establish that the employer reduced the number of hours available to Ms. Harper. The greater weight of the evidence indicates that Ms. Harper was responsible for any reduction in her work hours. The greater weight of the evidence indicates that the employer continued to make full-time work available to Ms. Harper. The evidence in the record fails to establish a significant change in the conditions of employment that would establish good cause attributable to the employer for the quit. The greater weight of the evidence indicates that Ms. Harper quit the employment to accompany her fiancé back to the Davenport area. Where an employee quits to move to a different locality or quits to accompany a spouse or significant other to a new locality, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(2) and (10).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Harper voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Harper is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer’s account shall not be charged for benefits paid to Ms. Harper.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because Ms. Harper has received benefits for which she has been deemed ineligible, those benefits constitute an overpayment that Ms. Harper must repay to Iowa Workforce Development. Ms. Harper is overpaid \$1,363.00.

DECISION:

The Agency representatives August 1, 2007, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid \$1,363.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw