IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARIA L CASTELLANOS
Claimant

HY-VEE INC
Employer

APPEAL NO: 15A-UI-04339-LD

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/22/15
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Maria L. Castellanos (claimant) appealed a representative's April 6, 2015 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 15, 2015. The claimant participated in the hearing and was represented by Beatriz Mate-Kodjo, attorney at law. Paul Jahnke appeared on the employer's behalf and presented testimony from three other witnesses, Marcie Neuhalfen, Megan Santella, and Rafael Rodriguez. Rafael Geronimo served as interpreter. During the hearing, Claimant's Exhibits A, B, C, E, and F were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 18, 2008. She worked part time as a custodian in the employer's Perry, Iowa store. While the claimant had initially worked an overnight schedule close to 40 hours per week, by 2012 the claimant's hours were down to about 28 hours per week, and by about April 2013 she was only working about 12 hours per week. Her last day of work was March 11, 2015. On that morning there had been an altercation between the claimant and an overnight manager; it had been alleged that the claimant used profanity in the exchange. Neuhalfen, the manager of perishables and one of the claimant's direct supervisors became aware of the allegation and send a message to the claimant that she wished to discuss the situation with her before she returned to work. Because of problems matching up availability, it was not until March 23 when the claimant and Neuhalfen were able to meet. Santella, the manager of store operations, and Rodriguez, an employee who served as interpreter, also participated in the meeting.

The claimant had been trying to get more hours for many months; in January she had been given a warning consultation which addressed among other things the fact that she had been expanding her hours beyond the 12 scheduled hours without permission, and that she was not allowed to do so. On March 23 the employer again addressed that issue with her and gave her another warning consultation; this also addressed the altercation from the morning of March 11.

Neuhalfen attempted to get the claimant to agree to restrict her hours to her scheduled hours, but the claimant refused. The claimant argued that she should be allowed to work more hours and that she had been requesting more hours. When Neuhalfen indicated that the claimant was expected to perform her assigned work in the time scheduled, the claimant said that she would not show up for work anymore if she was only going to get two hours per day. Neuhalfen asked if that meant that the claimant was quitting, and the claimant answered that if she was not going to be given any more hours that yes she was quitting. Santella then prepared a separation form; it was filled in to indicate that the claimant was quitting, and the claimant signed the form.

The claimant then asked for the statements of any witness who had said she had used profanity in the March 11 incident. Neuhalfen indicated that since the claimant had quit and was no longer an employee, she was not entitled to copies of the witness statements. The claimant then indicated that then she was not going to quit. However, as the employer had already accepted her resignation, the employer declined to allow the claimant to rescind her resignation.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. Rule 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not “voluntary” as she had not desired to end the employment; she argues that the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 claimant affirmatively stated through an interpreter that she was quitting and signed the form indicating such. The employer had made no decision to discharge the claimant. Where an employee has stated she is quitting and the employer has accepted the resignation, the employee is not entitled to rescind the resignation, even if the attempted rescission occurs only minutes after the resignation was tendered and accepted. Rule 871 IAC 24.25(37); *Langley v. Employment Appeal Board*, 490 N.W.2d 300 (Iowa App. 1992). Therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2.

The law presumes a claimant has voluntarily quit with good cause when she quits because of a substantial change in the contract of hire. Rule 871 IAC 24.26(1); *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). While the claimant’s hours for the past few years may have been substantially less than they were originally in 2008, the claimant did not quit

because of this until several years after the change had been implemented; she effectively acquiesced with the reduction in her hours, so that her quit in March 2015 due to the reduction can no longer be found to be for a substantial change. *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa App. 1990). The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's April 6, 2015 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 23, 2015, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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