

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

HANNAH R GARBER
Claimant

APPEAL NO. 18A-UI-06642-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STERLING INC
Employer

OC: 05/27/18
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Hannah Garber filed a timely appeal from the June 12, 2018, reference 01, decision that disqualified her for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Garber voluntarily quit on May 23, 2018 without good cause attributable to the employer. After due notice was issued, a hearing commenced on July 3, 2018 and concluded on July 9, 2018. Ms. Garber participated personally and was represented by paralegal John Graupmann. Carrie Fry represented the employer on July 3, 2018. On July 9, Roxanne Rose of Equifax represented the employer and presented testimony through Carrie Fry. Exhibits 1 through 5 and A through F were received into evidence.

ISSUE:

Whether Ms. Garber'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: Hannah Garber was employed by Sterling, Inc., d/b/a Kay Jewelers, as a salesperson from May 2017 until May 19, 2018, when she voluntarily quit the employment. Ms. Garber performed her duties at a Kay Jewelers store in Ottumwa. Ms. Garber began her employment as a part-time sales associate, but soon thereafter was promoted to full-time Key Holder. As a Key Holder, Ms. Garber performed quasi-managerial tasks in addition to her sales duties. Ms. Garber's wage in the Key Holder position was \$9.03 per hour plus a commission on sales. Ms. Garber was eligible for a .25 percent commission on merchandise sales and a five percent commission on warranties sold to customers in connection with the merchandise sales. From the start of Ms. Garber's employment until mid-April 2018, Becky Dooley was Store Manager and Carrie Fry was Assistant Store Manager at the Ottumwa location. In mid-April, Ms. Fry became the Store Manager. Ms. Dooley and Ms. Fry were Ms. Garber's supervisors. In March 2018, Ms. Garber notified Ms. Dooley and Ms. Fry that she was pregnant.

Ms. Garber's Key Holder duties ended on April 13, 2018. Ms. Garber continued to work as a full-time salesperson until the end of her employment. The parties dispute how and why

Ms. Garber came to no longer perform the Key Holder duties. Ms. Garber asserts that she was demoted. The employer asserts that Ms. Garber told the employer she no longer wished to continue in the Key Holder duties. On April 13, 2018, Ms. Fry and Ms. Dooley directed Ms. Garber to return her store keys to them before she commenced an approved week of vacation. Ms. Dooley had at that point given her notice that she was leaving Kay Jewelers and Ms. Fry was at that point stepping into the Store Manager position.

In the five weeks that preceded April 13, 2018, the employer scheduled Ms. Garber for 43 hours, 40 hours, 38.5 hours, 40 hours, and 40.5 hours respectively. Ms. Garber had previously worked a similar full-time schedule during her time as a Key Holder. Ms. Garber worked her scheduled hours during the three weeks between March 11 and March 31, but did not work all of her scheduled hours during the weeks of April 1-7 and April 8-13. On April 7, Ms. Garber left work within a few minutes of starting her shift because she lacked child care for her children. Ms. Garber initially told the employer she would return in an hour. Ms. Garber later told the employer she would not be returning for the remainder of the shift. On April 11, Ms. Garber requested to leave midway through her 9.5 hour shift due to a lack of child care and left at that time.

On April 13, 2018, Ms. Garber asked Ms. Dooley whether Ms. Dooley might allow Ms. Garber to share a commission with Ms. Dooley for sales that Ms. Dooley made without Ms. Garber's involvement. Ms. Garber made the request after she became aware that Ms. Dooley was sharing sales commissions with Ms. Fry as Ms. Dooley transitioned out of the Store Manager position and Ms. Fry transitioned into the Store Manager position. Ms. Garber was upset when Ms. Dooley declined to share commissions with her. On that same day, Ms. Dooley and Ms. Fry met with Ms. Garber for the purpose of issuing written discipline based on a customer complaint and based on Ms. Garber's recent early departures from her shifts. Ms. Garber was upset by the discipline. It was at this time that the employer requested Ms. Garber's store keys before Ms. Garber commenced her vacation.

When Ms. Garber returned to work on April 22, 2018, following her vacation, the employer continued to schedule Ms. Garber for full-time hours. During the week of April 22-28, Ms. Garber was scheduled for 41.5 hours and worked those hours. During the week of April 29 through May 5, Ms. Garber was scheduled for 37.5 hours and worked those hours. During the week of May 6-12, Ms. Garber was scheduled for 43.5 hours, but did not work all of those hours.

During the week of May 6-12, Ms. Garber discovered that Ms. Fry had cancelled a pending watch sale and warranty sale that Ms. Garber had been involved in and for which Ms. Garber expected to receive commissions. Ms. Fry cancelled the sale without discussing the matter with Ms. Garber. Ms. Garber also discovered during the same week that Ms. Fry had subsequently entered the sale under her own employee ID so that she would receive the commission due on the sale of the watch and the warrantee. Ms. Fry had taken these additional steps without discussing the matter with Ms. Garber. Ms. Garber concluded that Ms. Fry had stolen her sale and the associated commission.

Ms. Garber's belief that Ms. Fry had stolen a sale from her weighed heavily in the interactions between the pair from that point to May 19, 2018, when Ms. Garber decided to leave the employment. On May 10, Ms. Garber was scheduled to work from 4:30 p.m. to 9:30 p.m. The employer was at that time running a customer appreciation promotion and needed all employees to appear for work as scheduled. On May 10, Ms. Garber requested to come in later than 4:30 p.m., but did not provide a reason for the request. Ms. Fry denied the request. After Ms. Garber appeared for work, Ms. Fry concluded that Ms. Garber was not being productive

and sent her home at 6:20 p.m. On May 11, Ms. Fry met with Ms. Garber and issued a warning regarding Ms. Garber's sales production. Ms. Garber believed the reprimand was unfair and Ms. Fry had hindered her sales production by sending her home early and by stealing her sale. Ms. Fry placed Ms. Garber off work for the weekend, which included Ms. Garber's seven-hour shift on May 12.

During the week of May 13-19, Ms. Fry scheduled Ms. Garber to work 37 hours, but Ms. Garber did not work all of those hours. On May 14, Ms. Garber was scheduled to work from 1:00 p.m. to 9:30 p.m. Ms. Fry sent Ms. Garber home at 6:20 p.m. after concluding that Ms. Garber was not being productive. On May 18, Ms. Garber was scheduled to work from 1:00 p.m. to 9:30 p.m. On that day, Ms. Fry sent Ms. Garber a text message requesting that Ms. Garber come in at 3:30 p.m. due to the district manager's decision to cut labor hours. Ms. Garber understood the text message to be a directive that she not report for work until 3:30 p.m. However, starting at 3:30 p.m. created a hardship for Ms. Garber and her boyfriend based on their sharing of a single vehicle and the need to collect their children from day care.

On May 18, Ms. Garber reported to the workplace at 1:00 p.m. Ms. Garber brought her small child with her. Ms. Garber accessed a register to print the transaction receipts related to the sale she believed Ms. Fry had stolen from her. Ms. Garber then briefly entered the back room of the store. A coworker came to tell Ms. Garber she could not be in the back room while off duty and that her child also could not be in the back room. While Ms. Garber was in the back room of the store, a company auditor who happened to be working in the store attempted to question her about her conduct. Ms. Garber stated that she was leaving. Ms. Garber declined to relinquish the transaction receipts she had printed. Ms. Garber told Ms. Fry that reporting for work at 3:30 p.m. did not work her. Ms. Garber did not report for work on May 18.

On May 19, Ms. Garber reported to the workplace for a store meeting. During the meeting, Ms. Fry stated that Ms. Garber's conduct on May 18 was inappropriate and that Ms. Garber should be discharged from the employment. Ms. Fry uttered the remark in the presence of the other employees. Ms. Fry did not tell Ms. Garber that she was in fact discharged from the employment. Ms. Garber left the workplace after the meeting and did not thereafter return to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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).

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).

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's

appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded 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).

The weight of the evidence in the record establishes a voluntary quit for good cause attributable to the employer. The evidence in the record establishes a dysfunctional employment relationship to which both parties contributed. The employer set the tone of the dysfunctional employment relationship. Both parties provided testimony colored by their agenda. On the surface, the quit looks like it was in response to the May 19, 2018 verbal reprimand. The weight of the evidence indicates that Ms. Fry most likely did utter the verbal reprimand during the employee meeting. A reasonable person in Ms. Garber's shoes would find such public rebuke hard to bear. While that event factored in Ms. Garber's decision to leave the employment, it was but the tail end of a chain of events that factored in her decision to leave the employment. The two most important things that factored in the quit were Ms. Garber's reasonable conclusion that Ms. Fry had stolen a sale and the associated sales commission from her and the employer's effective and substantial cutting of Ms. Garber's work hours toward the end of her employment. Ms. Fry provided Ms. Garber with no explanation for the irregular steps Ms. Fry took vis-à-vis the watch and warranty sale Ms. Garber had handled and for which Ms. Garber reasonably expected to receive commissions. The weight of the evidence also establishes that Ms. Fry effectively and substantially cut Ms. Garber's work hours toward the end of the employment, by sending Ms. Garber home early, eliminating at least one shift, and directing Ms. Garber to report late for another shift, all under questionable circumstances.

The weight of the evidence establishes a voluntarily quit for good cause attributable to the employer, based on a substantial change in in the conditions of the employment and based on intolerable and detrimental working conditions. Accordingly, Ms. Garber is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The June 12, 2018, reference 01, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The quit was effective May 19, 2018. 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/rvs