IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

AISLYNN J KORF Claimant **THRIVE TOGETHER LLC** Employer	**APPEAL 20A-UI-11609-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/31/20** **Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
Public Law 116-136, Sec. 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On September 21, 2020, the employer filed an appeal from the September 11, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 3, 2020. Claimant participated and testified. Employer participated through its general manager, Rachel Riley. Employer's Exhibits 1 through 3 were received into evidence.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 29, 2015. Claimant last worked as a full-time server/bartender/shift leader. Claimant was separated from employment on June 4, 2020, when she voluntarily quit.

On June 4, 2020, Riley had a conversation with claimant and another employee, in which she notified them they were both being demoted from their shift lead positions. Riley had received complaints from multiple team members about claimant's demeanor including allegations that she referred to employees as being stupid and lazy and criticized another manager's scheduling ability. (Exhibit 1). Claimant had no prior disciplinary action.

Claimant received a base pay rate of $11.00 per hour while working as a shift lead and worked approximately ten hours per week in this position. Claimant's base server pay was $4.35 per hour and her base pay as a bartender was $5.35 per hour. Riley also informed claimant and the

other employee they would no longer be scheduled to work at the same time. Both employees had been working approximately 40 hours per week. The business was open 63 hours per week, leading claimant to believe her hours would also be reduced. Later in the day, on June 4, claimant informed Riley, via text message, that she was resigning effective June 23, 2020. (Exhibit 2). Riley responded that it would be best to part ways that day. (Exhibit 3).

The claimant filed for and received a total of $1,163.00 in regular unemployment insurance benefits and $3,000.00 in Federal Pandemic Unemployment Compensation for the weeks between May 31, 2020 and July 4, 2020. The employer did not participate in a fact finding interview cold call regarding the separation. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer.

Iowa Code §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.

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.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
>
> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Claimant was demoted as a result of complaints made against her while acting as a shift lead. As a result of this demotion, claimant would become a coworker among people she previously supervised. Additionally, claimant's hourly rate as a shift lead was approximately double her hourly rate as a server or a bartender. Claimant also had good reason to believe her hours would be cut substantially when she was told she would no longer be scheduled to work at the same time as another employee, given the employer was only open 63 hours per week and both employees were working around 40 hours per week.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Here, claimant was given no such warning prior to being demoted. As such, the employer has not established misconduct. Her loss of supervisory, management and administrative authority and duties, complied with the reduction in pay and hours, is considered a substantial change in contract of hire and the separation was with good cause attributable to the employer. Since there was no disqualifying basis for the demotion, the quit because of the change in contract of hire was with good cause attributable to the employer. Inasmuch as the claimant would suffer a

reduction in pay, hours, and status, and employer has not established misconduct as a reason for the effective demotion, the change of the original terms of hire is considered substantial. Thus, the separation was with good cause attributable to the employer.

PL116-136, Sec. 2104 provides, in relevant part:

> EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.
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> …
>
> (b) Provisions of Agreement
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> (1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to
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> (A) the amount determined under the State law (before the application of this paragraph), plus
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> (B) an additional amount of $600.00 (in this section referred to as "Federal Pandemic Unemployment Compensation").

As regular state unemployment insurance benefits are allowed, so is Federal Pandemic Unemployment Compensation. The issues of overpayment and participation are moot.

DECISION:

The September 11, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

November 9, 2020
Decision Dated and Mailed

nm/scn