

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERYL L CLARK

Claimant

APPEAL NO. 17A-UI-08520-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 07/23/17

Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Sheryl Clark filed a timely appeal from the August 10, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Clark voluntarily quit on July 24, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 7, 2017. Ms. Clark participated and presented additional testimony through Tammy Treat. Janice Foote represented the employer and presented additional testimony through Kristy Eitzen. Exhibits 1 through 4 were received into evidence.

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: Sheryl Clark was employed by Good Samaritan Society, Inc., as a part-time Certified Nursing Assistant (CNA) from 2008 until July 24, 2017, when she voluntarily quit. Ms. Clark's immediate supervisor was Kristy Eitzen, Director of Nursing. On July 10, 2017, Ms. Eitzen and Janice Foote, Human Resources Director, met with Ms. Clark for the purpose of issuing two written reprimands. The first written reprimand was for tardiness. Ms. Clark had been late for work for personal reasons on July 10, 2017 and had a habit of being late for work. The second written reprimand was based on Ms. Clark engaging in an argument with a coworker on July 10, 2017. During the meeting on July 10, 2017, Ms. Eitzen and Ms. Foote presented Ms. Clark with the first reprimand and Ms. Clark signed that reprimand. When Ms. Eitzen and Ms. Foote began to review the second reprimand with Ms. Clark, Ms. Clark erroneously assumed she was about to be discharged from the employment. The employer was short-staffed and was not planning to discharge Ms. Clark from the employment at that time. Under the erroneous belief that she was about to be discharged, Ms. Clark excused herself from the meeting. Ms. Clark retrieved and completed a Notice of Resignation Form. Ms. Clark returned to the meeting with the form and stated that she was providing two-weeks' notice that she was quitting the employment. Ms. Clark and the employer determined that July 24, 2014 would be the date two-weeks from July 10, 2017. Ms. Clark delivered her written quit notice to the employer with July 24, 2017

designated as the last day of her employment. Ms. Clark indicated on the form that she was leaving the employment due to harassment. Ms. Clark had not been harassed in the workplace. One or more of Ms. Clark's coworkers had commented that Ms. Clark was slow. One or more of Ms. Clark's coworkers did not like to assist Ms. Clark with two-person transfers. One or more of Ms. Clark's coworkers balked Ms. Clark's requests to cover her work area during Ms. Clark's lunch break.

On the morning on July 11, 2017, Ms. Clark submitted a supplemented quit notice in which she added poor work conditions and long shifts as factors in her decision to leave the employment. In mid-June, Ms. Eitzen had announced at a meeting that the CNAs would have to start working 12-hour shifts due to a shortage of CNAs. Ms. Clark was not present at the meeting because she was assigned to care for patients at the time of the meeting. Ms. Clark has up to that point been assigned to work the day shift from 6:00 a.m. to 2:00 p.m., an eight-hour workday. Effective June 18, 2017, the employer commenced scheduling Ms. Clark to work 12-hour shifts, from 6:00 a.m. to 6:00 p.m. Prior to tendering her resignation on July 10, 2017, Ms. Clark worked 12-hour shifts on June 18, 22, 23, 26 and 27 and on July 1, 2, 3 and 7. Though Ms. Clark was supposed to get a 30-minute lunch break, there were several instances, both before and after the change to the 12-hour shifts, when Ms. Clark was unable to take a 30-minute lunch break because she could find no one to cover her duties so that she could go on break. Ms. Clark complained to the employer on or about June 18 that she was unable to take a lunch break because her coworkers refused to cover her assigned duties.

After Ms. Clark provided her quit notice to the employer, she worked her two-week notice period and then separated from the employment effective July 24, 2017.

REASONING AND CONCLUSIONS OF LAW:

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 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.

Iowa Admin. Code r. 871-24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

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).

The weight of the evidence in the record establishes a voluntary quit for some reasons that did not constitute good cause attributable to the employer and for other reasons that did constitute good cause attributable to the employer. Ms. Clark's quit in response to the being reprimanded,

and based on her erroneous belief that she was about to be discharged, would not establish a quit for good cause attributable to the employer. In addition, the weight of the evidence does not support Ms. Clark's assertion that she was being harassed. On the other hand, the evidence establishes substantial changes in conditions of the employment effective June 18, 2017, when the employer changed Ms. Clark's work hours from eight-hour shifts, 6:00 a.m. to 2:00 p.m., to 12-hour shifts, from 6:00 a.m. to 6:00 p.m. Ms. Clark worked only nine such shifts before she tendered her resignation. Ms. Clark resigned in a timely manner following the substantial change in the conditions of the employment. The weight of the evidence also establishes intolerable and detrimental working conditions based on the employer's failure to ensure that Ms. Clark had a 30-minute lunch break while working the 12-hour shifts. The employer's repeated failure to provide a reasonable lunch break in the context of the 12-hour shifts was part of a pattern that existed well before implementation of the 12-hour shifts. The weight of the evidence fails to establish that charge nurses or the director of nursing were readily available to assist with the break situation.

For the reasons set forth above, the administrative law judge concludes that Ms. Clark voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Clark is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The August 10, 2017, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. 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