

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RICKI A BERRY
Claimant

KDH HOME HEALTH INC
Employer

APPEAL NO. 21A-UI-00593-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/09/20
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Ricki Berry, filed a timely appeal from the November 18, 2020, reference 01, decision that disqualified her for benefits effective August 30, 2020, based on the deputy's conclusion that the claimant voluntarily quit effective August 27, 2020 without good cause attributable to the employer. The deputy allowed benefits to the claimant for the two-week period of August 16-29, 2020, based on the deputy's conclusion that the employer ended the employment in response to the claimant providing a quit notice on August 13, 2020. The hearing was originally scheduled for February 9, 2021, but was moved by agreement to February 2, 2021 to accommodate the claimant's conflict with a February 9, 2021 dental procedure. The parties waived the 10-day notice requirement. The claimant participated. Karen Huber represented the employer. Exhibits 1 through 31 and A were received into evidence.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.
Whether the employer terminated the employment prior to the effective quit date.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer provides elderly clients with in-home assistance with activities of daily living. The claimant was employed as a part-time caregiver from January 2020 until August 14, 2020. On August 13, 2020, the claimant submitted her written resignation and provided a two-week notice. On August 14, 2020, the employer terminated the employment in lieu of having the claimant continue to work during the notice period.

The claimant's August 13, 2020 resignation arose from miscommunication involving the claimant, her supervisor, and the scheduler, as well as personality conflicts between the claimant and multiple staff, and stress the claimant was experiencing in her personal life.

The claimant's husband had recently been diagnosed with Stage III melanoma and was in the process of starting treatment at the University of Iowa Hospital & Clinics. The claimant had

spoken with a supervisor about her need for time off for her husband's medical appointments and the supervisor had agreed to accommodate the claimant's need for time off.

The claimant's resignation following three days after the devastating August 10, 2020 derecho, which prompted the employer to temporarily restrict telephone communications with its office to a single line.

The claimant's resignation occurred in the context of the claimant losing two of her assigned clients, one due to a hospitalization and another due to admission to a nursing home.

The claimant's resignation occurred in the context of the employer attempting to provide the claimant with additional clients to make up for the lost clients.

Through a miscommunication to which multiple parties contributed, the scheduler was unaware of the claimant's personal circumstances or that the claimant was attempting to reduce her work hours at the time the scheduler contacted the claimant about adding clients to her caseload. During her August 13, 2020 interaction with the scheduler, the claimant became verbally abusive with the scheduler. The claimant emailed her resignation shortly thereafter. The scheduler reported the incident to the franchise owner, who elected to wait until the next day to contact the claimant, in hope that tempers would have cooled by that time.

On August 14, 2020, the employer contacted the claimant and engaged cordial, caring conversation regarding the claimant's husband's health condition. The employer then turned the conversation to the previous day's conflict. The claimant again became verbally abusive and made extensive use of vulgar language. The employer elected to end the employment at that time, rather than have the claimant continue to the end of her notice period.

The claimant had accrued sundry complaints about various aspects of the employment. These included being asked to submit written reports regarding a bad family dynamic in one of the homes the claimant served. The claimant completed the written reports when she was away from the client's house and was not compensated for the time she spent creating the reports. The claimant does not appear to have requested compensation and the supervisor involved did not address compensation for the claimant's times in drafting these reports. The claimant believed the employer asked her to perform work outside the scope of her duties by asking her to take a contract to a client's home and present it for the family caregiver's signature. The claimant believed the employer wanted her to operate her vehicle in an unsafe condition to deliver the contract. At the time, the claimant's windshield was cracked. The employer's policy prohibited transporting clients in vehicles with cracked windshields and the claimant extrapolated a broader prohibition from that policy. The claimant sometimes approached workplace issues with insufficient tact, which had prompted multiple staff to avoid contact with the claimant.

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).

Iowa Admin. Code r. 871-24.25(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

...

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

...

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

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.

...

(4) The claimant left due to intolerable or detrimental working conditions.

"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 test of whether working conditions are intolerable or detrimental included consideration of 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*

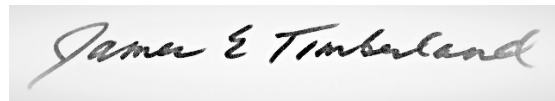
Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The evidence in the record establishes an August 27, 2020 voluntary quit without good cause attributable to the employer. The claimant's emotional state appears to have been the biggest factor in the employment coming to an end when it did. The claimant was understandably under considerable stress due to her husband's health condition and the derecho. Despite the claimant's accrual of sundry complaints and the friction between personalities, the working conditions appear to have been relatively tolerable throughout the employment, that is until the claimant decided they were not. The claimant had a number of legitimate concerns, all of which appear to have been amenable to resolution favorable to the claimant if she approached them with a cooler head. The supervisor had expressly told the claimant that the employer would work with the claimant regarding her need for time off. The scheduler was out of the loop, was following through on her assigned duties, and this set the claimant off. Though the claimant had some legitimate concerns, the evidence also reveals a predisposition toward negativity and petty score-keeping. The weight of the evidence does not establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment or substantial changes in the conditions of the employment.

Effective August 30, 2020, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. Because the employer terminated the employment prior to the effective quit date, the employer's account may be charged for benefits for the notice period of August 16, 2020 through August 29, 2020 and the claimant is eligible for benefits for that two-week period, provided she is otherwise eligible. The employer's account shall not be charged for benefits for the period beginning August 30, 2020.

DECISION:

The November 18, 2020, reference 01, decision is affirmed. The claimant voluntarily quit without good cause attributable to the employer. Effective August 30, 2020, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. Because the employer terminated the employment prior to the effective quit date, the employer's account may be charged for benefits for the notice period of August 16, 2020 through August 29, 2020 and the claimant is eligible for benefits for that two-week period, provided she is otherwise eligible. The employer's account shall not be charged for benefits for the period beginning August 30, 2020.



James E. Timberland
Administrative Law Judge

February 22, 2021
Decision Dated and Mailed

jet/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**