

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

GERRY D BACON
Claimant

APPEAL NO. 18R-UI-01543-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PUTMAN INC
Employer

OC: 11/12/17
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

This matter was before the administrative law judge upon remand by the Employment Appeal Board for a new hearing. Claimant Gerry Bacon filed a timely appeal from the December 4, 2017, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Bacon had voluntarily quit on June 26, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 27, 2018. Ms. Bacon participated. Amy Sheaffer represented the employer and presented additional testimony through Heather Foster. The administrative law judge took official notice of the Agency's administrative record of Ms. Bacon's quarterly wages as reported by the employer (WAGE-B)

ISSUE:

Whether Ms. Bacon'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: Gerry Bacon was employed by Putman, Inc. doing business as A-1 Careers, as a full-time non-medical home care aide from 2013 until June 26, 2018, when she voluntarily quit due to a temporary dip in work hours and associated dip in wages. Throughout the employment, Ms. Bacon had worked full-time hours and overtime hours. Beginning in early 2017, there were fewer overtime hours available. The employer guarantees full-time staff 36 hours per week, but does not guarantee additional hours or overtime hours. At the time fewer overtime hours became available, Ms. Bacon started a second, part-time supplemental job as a dishwasher in a restaurant. The dishwashing work paid \$10.00 per hour, while the home care aide work paid \$13.00 per hour.

During the week of June 4-10, 2017, Ms. Bacon's work hours dipped to 38.99. On June 9, 2017, Ms. Bacon complained to her supervisor, Branch Manager Heather Foster, about the dip in hours. Ms. Foster directed Bacon to speak with Scheduling Coordinator Jessica Warren. Ms. Bacon spoke with Ms. Warren. Ms. Warren told Ms. Bacon that the company had experienced a decrease in the number of clients. However, Ms. Warren found additional clients

for Ms. Bacon to serve. Ms. Bacon's work hours immediately returned to full-time plus overtime. Despite the employer's quick response and resolution of Ms. Bacon's complaint about decreased work hours, Ms. Bacon verbally notified Ms. Foster that she would be quitting the employment effective June 26, 2017. Ms. Bacon told Ms. Foster that she was tired of having to fight for work hours, though Ms. Bacon had not in fact had to fight for work hours. Ms. Foster requested that Ms. Bacon reduce her quit notice to writing. On June 12, 2017, Ms. Bacon sent an email message to Ms. Foster giving notice of her June 26, 2017 effective quit date. Ms. Bacon repeated her assertion that she had had to fight for work hours and added that she would not have had her hours restored if she had not complained. Ms. Bacon also complained about having to work on Sundays. However, Ms. Bacon had worked on Sundays, to one extent or another, per her wishes, throughout the employment.

After Ms. Bacon submitted her resignation, she contacted Ms. Foster to indicate that she was having second thoughts about resigning. Ms. Bacon did not request to rescind her resignation. Instead, Ms. Bacon sent Ms. Foster an email message on June 21, 2017 in which she reaffirmed her plan to quit the employment effective June 26, 2017. Ms. Bacon worked until June 26, 2017 and then separated from the employment. The employer continued to have work available for Ms. Bacon at the time of the resignation notice and the effective quit date. Ms. Bacon did not leave for other, better 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.

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 evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. Ms. Bacon’s brief dip in work hours during the week of June 4-10, 2017, and the associated brief dip in wages from the employment, did not constitute substantial changes in the conditions of the employment. As soon as Ms. Bacon raised her concern, the employer added clients and work hours to get Ms. Bacon back to the status quo that has existed since the beginning of 2017. The decrease in overtime hours would not provide good cause to leave the employment six months later. By electing to remain in the employment for a further extended period, Ms. Bacon effectively acquiesced in that change. The evidence fails to establish a substantial change in the conditions of the employment in connection with Sunday work. The weight of the evidence indicates that Ms. Bacon generally performed Sunday work and that the employer conformed her Sunday schedule to her preferences and availability.

Because the administrative law judge concludes that Ms. Bacon voluntarily quit the employment without good cause attributable to the employer, Ms. Bacon is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Bacon must meet all other eligibility requirements. The employer’s account shall not be charged.

DECISION:

The December 4, 2017, reference 02, decision is affirmed. The claimant voluntarily quit the employment on June 26, 2017 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer’s account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs