IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GLENDA M FREDERICKSEN
Claimant

SIOUXLAND RESIDENTIAL SERVICES INC
Employer

APPEAL NO. 09A-UI-11367-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/21/09
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 31, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 24, 2009. Claimant Glenda Fredericksen participated. Attorney Jill Finken represented the employer and presented testimony through Arlene Shockman, Executive Director.

ISSUE:

Whether Ms. Fredericksen separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Glenda Fredericksen was employed by Siouxland Residential Services as a full-time residential advisor from December 2001 until June 19, 2009. Michelle Albright, Group Home Coordinator, was Ms. Fredericksen's immediate supervisor. Ms. Fredericksen worked in a group home and supervised five adult clients with mental illness. Some of the clients also suffered from mild mental retardation. Ms. Fredericksen's work hours were 3:00 p.m. to 8:00 a.m. Ms. Fredericksen was received an hourly wage of $9.98 for the hours of 3:00 p.m. to 11:00 p.m. At that time, provided the clients were safe in bed, Ms. Fredericksen could go to sleep until 6:00 a.m. the next morning. While Ms. Fredericksen slept, she did not receive her hourly wage. Instead, the employer paid Ms. Fredericksen a $30.00 nightly "stipend." From 6:00 to 8:00 a.m., the employer would again pay Ms. Fredericksen her $9.98 hourly wage. In the event that Ms. Fredericksen's assistance was needed during the period of 11:00 p.m. to 6:00 a.m., the employer would pay Ms. Fredericksen her regular hourly wage. The $30.00 stipends amounted to $210.00 per pay period.

On May 1, 2009, Ms. Fredericksen gave a deposition in a worker's compensation matter that also involved the employer. During the deposition, Ms. Fredericksen testified that she took a prescription sleep aid, Ambien. On June 10, Ms. Fredericksen provided Arlene Shockman, Executive Director, with a copy of the deposition, which Ms. Shockman reviewed on June 12, 2009.

On June 12, the employer spoke to Ms. Fredericksen by telephone about her use of the sleep aid during her overnight hours at work. Ms. Fredericksen indicated she had been taking the sleep aid for over a year. Ms. Fredericksen indicated she stored the sleep aid in her purse while she was at work. The employer asked Ms. Fredericksen to switch to a non-overnight shift. Ms. Fredericksen indicated that she needed the $30.00 stipend that went with the overnight hours. The employer suggested that Ms. Fredericksen cut back her overnight shifts. This would require Ms. Fredericksen to go part-time and was not acceptable to Ms. Fredericksen. The employer then indicated that Ms. Fredericksen could stay in the overnight hours, but would no longer be allowed to take the sleep aid while at work. The employer wanted Ms. Fredericksen to sign an agreement to not take the sleep aid while at work. Ms. Fredericksen indicated she would sign the agreement on June 15, her next overnight shift.

On June 15, Ms. Fredericksen called in sick for her overnight shift. Ms. Fredericksen contacted the group home rather than the office. On June 15, the employer contacted Ms. Fredericksen and requested that Ms. Fredericksen provide a doctor's excuse to cover the absence that the employer deemed suspicious. Later in the day, the employer spoke with Ms. Fredericksen's attorney and reiterated the employer's position that Ms. Fredericksen could not return to the overnight hours unless she signed the agreement not to take the sleep aid.

On June 16, the employer spoke with a representative of the Iowa Department of Inspections and Appeals, who suggested that the employer move Ms. Fredericksen to non-overnight hours and not allow her to continue in the overnight hours regardless of whether she was willing to sign the agreement.

On June 16, the employer contacted Ms. Fredericksen by telephone. The employer told Ms. Fredericksen that the employer was no longer willing to ask Ms. Fredericksen to cease taking a prescription sleep aid. The employer told Ms. Fredericksen that she could not return to the overnight shift. The employer offered Ms. Fredericksen at 1:00 to 9:00 p.m. shift, Monday through Friday. Ms. Fredericksen agreed to provide the employer with a response the following day.

On July 17, Ms. Fredericksen notified the employer she was rejecting the offer of the 1:00 to 9:00 p.m. shift and was willing to sign an agreement to not take the sleep aid at work. The employer restated its position that it could not ask Ms. Fredericksen to cease taking a prescription sleep medication.

On July 17, after the employer consulted with legal counsel, the employer contacted Ms. Fredericksen and told her that her sole option was to accept the 1:00 to 9:00 p.m. shift and that the employer would expect her to report for work on Monday, July 20, provided the doctor had released her to return to work. The employer indicated it would send Ms. Fredericksen a new schedule. Ms. Fredericksen indicated she would not work the changed hours. The employer asked Ms. Fredericksen to provide something in writing and Ms. Fredericksen agreed to do so.

On July 18, the employer received a certified mail receipt confirmation Ms. Fredericksen's receipt of the new schedule.

On July 19, the employer received a fax from Ms. Fredericksen's attorney. The fax indicated that Ms. Fredericksen would not accept the changed work hours and would be applying for unemployment insurance benefits.

The employer's ostensible concern was that the clients would not be able to rouse Ms. Fredericksen in the middle of the night if she took the sleep aid and that Ms. Fredericksen would not be able to function as well at work if she ceased taking the sleep aid. The employer can cite no incident of a client being unable to rouse to Ms. Fredericksen during the more than a year period that Ms. Fredericksen had been taking the sleep aid.

The employer cites Ms. Fredericksen's failure to notify the employer that she was taking the sleep aid and deems it a violation of a driving policy document Ms. Fredericksen signed at the beginning of 2002. That policy imposed a requirement that Ms. Fredericksen notify the employer is she started taking a medication.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

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.

871 IAC 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, not 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 that Ms. Fredericksen voluntarily quit the employment in response to a significant change in the conditions of her employment. The significant changes included, first and foremost, the loss of $210.00 in income per pay period

through loss of the $30.00 nightly stipend. The changes also included the change in work hours. Under Dehmel, the employer's motivation in demanding the changed conditions does not matter when determining a claimant's eligibility for unemployment insurance benefits. Ms. Fredericksen's voluntary quit was for good cause attributable to the employer. Accordingly, Ms. Fredericksen is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Fredericksen.

DECISION:

The Agency representatives July 31, 2009, reference 01, decision is affirmed. The claimant 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.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/pjs