

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA A WILSON
Claimant

APPEAL NO. 17A-UI-00921-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IMAGINATION CREATIONS INC
Employer

OC: 01/01/17
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 20, 2017, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that Ms. Wilson have voluntarily quit on December 31, 2016 due a change in the contract of hire. After due notice was issued, a hearing was held on February 15, 2017. Ms. Wilson participated. Wendy Wolver represented the employer and presented additional testimony through Maisi Watts. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO) and of the quarterly wages paid to the claimant (WAGE-B and DBRO). Exhibits 1 through 7 and A through G were received into evidence.

ISSUE:

Whether Ms. Wilson'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: Rebecca Wilson was employed by Imagination Creations, Inc., d/b/a Slumberland Furniture, as a full-time sales associate from 2014 until January 1, 2017, when she voluntarily quit in response to changes in the established conditions of the employment. Throughout the employment, Ms. Wilson had been a commission-based salesperson and had earned 6 percent commission on sales. Ms. Wilson had also received a separately calculated commission on designated products. Throughout the employment, Ms. Wilson had regularly worked weekends, when she made 60 percent of her weekly sales due to increased customer traffic. Throughout the employment, Ms. Wilson had worked as one of four full-time sales people at the employer's store in Oskaloosa. Throughout the employment, the employer had calculated Ms. Wilson's vacation pay benefit by averaging her weekly sales for the year and paying her the weekly amount for vacation.

Ms. Wilson quit the employment in response to the changes the employer planned to implement in several of the above areas. The changes went into effect January 1, 2017, the same day Ms. Wilson tendered her resignation. The employer restructured Ms. Wilson's pay so that she

would receive a base wage of \$7.25 per hour and a three percent commission. The employer initially gave notice that the commission would go to two percent, but added back one percentage point in response to Ms. Wilson's protest. Ms. Wilson determined that the base wage plus commission structure would reduce her monthly earnings by \$200.00 before factoring in other planned changes. Under the protocol to be implemented on January 1, 2017, Ms. Wilson would be required to be off work every fifth weekend, reducing her sales for that week by approximately 60 percent. The employer's planned changes included adding another full-time salesperson at the Oskaloosa store, which would reduce the number of sales opportunities available to each of the existing staff members, including Ms. Wilson. The employer's planned changes included reducing Ms. Wilson's vacation pay to \$7.25 per hour, rather than an average of her weekly earnings for the preceding year. Ms. Wilson determined this change alone would reduce her weekly vacation pay by \$400.00.

The employer made additional changes that were to go into effect January 1, 2017. The employer implemented changes in the special commission structure that applied to certain products and added a quarterly bonus structure. Based on her experience in the employment, Ms. Wilson questioned whether she or anyone else would be able to make bonus. The employer also changed the manner in which sales goals were set. Throughout the employment, the sales associates had set their monthly sales goals and presented those goals to Maisi Watts, Operations Manager. Under the new protocol, the business management would issue the monthly sales goals without consulting with the sales associate.

Prior to separating from the employment, Ms. Wilson attempted to persuade the employer to leave the established conditions of her employment unchanged. The employer declined to do that.

REASONING AND CONCLUSIONS OF LAW:

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.

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 timely voluntary quit in response to multiple substantial changes in the established conditions of the employment. The weight of the evidence indicates that Ms. Wilson reasonably concluded the changes to be implemented on January 1, 2017 would have a negative and substantial impact on her earnings. A reasonable person would conclude that halving the sales commission of a successful salesperson, even with the addition of a minimum wage base wage, would have a negative and substantial impact on that salesperson's total earnings from the employment. A reasonable person would conclude that compelling an commissioned sales person to be off work one of five weekends, the busiest sales days, would have a negative and substantial impact on the sales person's earnings. The change in the vacation pay provides a stark example of the adverse impact the proposed changes would have on Ms. Wilson's compensation. A reasonable person would conclude that adding another full-time salesperson would reduce the sales opportunities and earnings available to the existing sales people.

Ms. Wilson voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Wilson is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The January 20, 2017, reference 01, decision is affirmed, with correction of the effective quit date to January 1, 2017. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs