

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CHARLETTA N TIDWELL**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 20A-UI-11124-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/21/20**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 4, 2020, 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 deputy's conclusion that the claimant voluntarily quit on March 14, 2020 for good cause attributable to the employer and due to a change in the contract of hire. After due notice was issued, a hearing was held on October 30, 2020. Claimant Charletta Tidwell participated. Barbara Buss of Corporate Cost Control represented the employer and presented testimony through McKenzie Raasch, Assistant Manager of Store Operations. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge official notice of the fact-finding materials for the limited purpose of documenting the employer's participation in the fact-finding interview.

**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: Charletta Tidwell was employed by Hy-Vee from August 2019 until on or about March 13, 2020, when she voluntarily quit in response to a change in the conditions of her employment. From the start of the employment until a couple days before Ms. Tidwell quit, Ms. Tidwell worked as a part-time food and beverage server in the Market Grille restaurant located within a Hy-Vee store in West Des Moines. Throughout that time, Ms. Tidwell compensation including a \$7.25 hour wage plus customer tips. Ms. Tidwell usually worked 24 to 31 hours per week, four shifts per week. The employer tries to limit part-time employees to 28 hours per week. Ms. Tidwell usually worked the evening shift, from 3:00 p.m. to 8:30 or 10:30 p.m. Ms. Tidwell would usually earn \$55.00 to \$75.00 in tips per shift.

A couple days before Ms. Tidwell quit, she arrived at work to find a sign on the restaurant door that indicated the restaurant was closed and that employees were to report for a meeting the following day. Ms. Tidwell appeared for the meeting as directed. At the meeting, the employer

announced that it was abandoning the Market Grille full-service restaurant concept and immediately transitioning to a Wallburgers quick-service restaurant concept. Pursuant to the change in concept, Ms. Tidwell and her fellow food servers would receive the new job title of host/food runner, would no longer wait on tables, would ring up customer orders at the register, would provide customers with an order number, and would “run” food to the customer’s table. Any customer tips would be pooled and split amongst the host/runners and table bussers. Ms. Tidwell’s supervisor was initially unsure of the wage that would be provided under the new concept. Ms. Tidwell’s supervisor was unsure whether employees would receive the same or different work hours. The employer anticipated that a number of servers would quit the employment in connection with the change in concept and wanted to wait to determine work schedules for remaining employees. Eighty percent, 13 or 14 of the Market Grille’s 17 servers, quit in response to the changes. Ms. Tidwell worked one shift under the new concept. During the shift, Ms. Tidwell learned that her new hourly wage would be \$11.00. Ms. Tidwell was disappointed at the end of the busy shift when her share of the pooled tips amounted to \$6.00. Ms. Tidwell notified her supervisor at that time that she was quitting the employment.

The employer’s witness or the appeal hearing, McKenzie Raasch, Assistant Manager of Store Operations, was not and is not involved in restaurant operations, but thinks that a very successful host/food runner could on a busy night earn \$20.00 in tips.

#### **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 Administrative Code rule 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:

24.26(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 for good cause attributable to the employer in response to substantial changes in the conditions of the employer. The substantial changes included changing Ms. Tidwell's duties from full-service waiter to quick-service order taker and food runner. While at first glance, the change in pay compensation might seem like an improvement or, at worse, a break-even situation, Ms. Tidwell and about 13 of her coworkers quickly discerned the reality was a substantial cut in pay. Assuming Ms. Tidwell's hours stayed in the 28-hour per week area, under the best-case scenario she could expect to make \$308.00 in wages and up to \$80.00 in tips per week, for maximum total compensation of \$388.00. Under the previous arrangement and a similar number of hours, Ms. Tidwell's weekly wages would be \$203.00 and her tips would range from \$220.00 to \$300.00, for total compensation of \$423.00 to \$503.00. Thus, the best case scenario under the new concept amounted to a \$35.00 to \$115.00 weekly pay-cut. Ms. Tidwell and the majority of her similarly situated coworkers did what a reasonable person would do, and what the employer anticipated they would do, and left the employment rather than acquiesce in the substantial cut in pay. Ms. Tidwell is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The September 4, 2020, reference 01, decision is affirmed. 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.



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James E. Timberland  
Administrative Law Judge

November 3, 2020  
Decision Dated and Mailed

jet/mh