

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WYNEIL K HILL
Claimant

APPEAL NO. 19A-UI-07309-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/GLENWOOD
Employer

**OC: 08/25/19
Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Wyneil Hill filed a timely appeal from the September 11, 2019, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Hill voluntarily quit on August 13, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 7, 2019. Mr. Hill participated. Trenton Kilpatrick of Corporate Cost Control represented the employer and presented testimony through Natalie McEwen. Exhibits 1, 2 and A were received into evidence.

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: Wyneil Hill was employed by the Iowa Department of Human Services as a full-time Residential Treatment Worker (RTW) at the Glenwood Resource Center from April 15, 2019 until August 13, 2019, when he voluntarily quit. On August 13, Mr. Hill provided the employer with a written resignation and the employer accepted the resignation. The resignation was to be effective immediately.

Mr. Hill's RTW duties involved providing assistance to disabled adult clients who resided on the Glenwood Resource Center Campus. The client's in Mr. Hill's care had physical and/or intellectual disabilities. Mr. Hill's work included assisting client's with hygiene, preparing meals and otherwise assisting with clients' individualized care needs. Mr. Hill's work hours were 2:00 p.m. to 10:30 p.m. Annie Hoffmeier, Treatment Program Manager, was Mr. Hill's immediate supervisor. Ms. Hoffmeier reports to Karen Baggett, Treatment Program Administrator. Ms. Baggett reports to Kelly Robinson, Assistant Superintendent of Program Services. Dan Hunter functions as the Assistant Superintendent of Program Services for the afternoon shift.

From the start of the employment until August 1, 2019, Mr. Hill was assigned to "house 465" and to care for the residents who resided in that house. Up to 15 clients resided in house 465.

Mr. Hill had received training on the individual needs of each client in his care. The employer's requires that an employee receives training on a client's individualized care needs before the employee is assigned to care for the particular client.

In June 2019, Mr. Hill spoke with Ms. Hoffmeier to complain about derogatory epithets he heard, and heard about, in the workplace. Mr. Hill is an African-American person. Mr. Hoffmeier complained after he heard from a coworker that a particular coworker had referred to him as a "lazy nigger" and after he heard similar racial slurs uttered in the workplace. When Mr. Hill spoke with Ms. Hoffmeier to lodge his complaint, he did so under the belief that he would be able to remain anonymous. However, on the next day, coworkers began to speak with Mr. Hill about his complaint. Dave Phillips, a supervisor assigned to house 465, admonished Mr. Hill for going to Ms. Hoffmeier with his complaint rather than first going to Mr. Phillips. Mr. Hill perceived that his coworker relationships took a turn for the worse. Mr. Hill perceived that he was being retaliated against for making the complaint and perceived that the work environment in house 465 had become hostile. Mr. Hill's sense that he was being retaliated against was deepened after his unsuccessful application for an Investigator 2 position. Mr. Hill applied for the position after he lodged his complaint with Ms. Hoffmeier. Mr. Hill interviewed for the Investigator 2 position in mid-June. On June 20, the employer notified Mr. Hill that he would not be further considered for the Investigator 2 position. Mr. Hill then learned that the employer had re-posted the opening. On July 3, 2019, Mr. Hill contacted Natalie McEwen, Public Service Supervisor, regarding his application for the Investigator 2 position. Mr. Hill told Ms. McEwen that the re-posting of the position felt like a slap in the face. Ms. McEwen explained the State of Iowa's hiring procedure.

In mid-July, Ms. Baggett held a staff meeting at house 465 that the employer characterized as a morale building meeting. Mr. Hill participated in the meeting. Immediately after the meeting, Ms. Baggett summoned Mr. Hill to a meeting that included Ms. Hoffmeier. At the meeting, Ms. Baggett accused Mr. Hill of "bickering" with coworkers in retaliation for not getting the Investigator 2 position. After the meeting, Mr. Hill was upset and received permission to go home early. During a subsequent discussion with another Treatment Program Manager, Samantha Yeager, commented that Mr. Hill had filled in at her assigned house a lot and perhaps he could be transferred to her house. Mr. Hill was familiar the clients and the clients' care needs in the house managed by Ms. Yeager.

On July 19, 2019, Mr. Hill sent an email message to Ms. McEwen in which he reasserted his complaint about derogatory racial epithets being uttered in the workplace at his expense. Mr. Hill updated his prior complaint to include Ms. Baggett's handling of the matter. Mr. Hill added to his complaint his concerns about receiving warnings for attendance. On July 19, 2019, Ms. McEwen responded by email and instructed Mr. Hill to complete a hostile workplace complaint to be forwarded to and investigated by the Iowa Department of Administrative Services (DAS). Mr. Hill submitted the requested formal complaint on July 24, 2019. Mr. Hill subsequently concluded that DAS and/or the DHS was dragging its heels on his complaint.

Mr. Hill last performed work for the employer on August 2, 2019. Effective August 1, 2019, Ms. Baggett had transferred Mr. Hill to a particular house where Mr. Hill had not previously worked. Mr. Hill's duties in this new house would include caring for a client with a colostomy bag, including wound care for the large stoma in the client's abdomen. Mr. Hill had not previously been called upon to perform wound care and psychologically unprepared for such duties. **Mr. Hill has a prior diagnosis of post-traumatic stress disorder (PTSD) that relates to his prior military service.** Mr. Hill had a strong emotional and psychological response to being assigned to work with unfamiliar clients and to being assigned to provide wound care. After his first day in the new house, Mr. Hill commenced an approved absence from the

employment. Mr. Hill had hoped to consult with his doctor regarding the flare up of his PTSD symptoms, but was unable to secure a timely appointment with his doctor. The employer referred Mr. Hill to an Employee Assistance Program (EAP) and Mr. Hill consulted with the health care provider. Mr. Hill was subsequently released to return to work without restrictions effective August 14, 2019.

On August 13, 2019, Mr. Hill met with Ms. McEwan and Dan Hunter regarding his prospective return to the employment on August 14, 2019. Mr. Hill discussed his concerns with being placed in the particular new house, including his concern about being asked to provide wound care and his concern with being asked to care for clients without first being trained in the clients' individualized care needs. Ms. McEwan reviewed with Mr. Hill the "essential functions" of his Residential Treatment Worker position. Mr. Hill stated that he had not expected he would be called upon to provide wound care or perform wound dressing changes. Ms. McEwan told Mr. Hill that regardless of whether he was assigned to the particular house with the client with the colostomy bag, there could be no guarantee going forward that he would not be pulled from another house to care for the resident with the colostomy bag. Mr. Hill concluded that he could not perform the wound care duties. Ms. McEwan presented resigning from the employment as an option and told Mr. Hill that he would be welcome to apply for other jobs at the Glenwood Resource Center in the future. Mr. Hill elected to resign from the employment, rather than perform the wound care duties associated with the newly assigned house. Mr. Hill completed a brief resignation memo. Ms. McEwan signed to accept the resignation. Mr. Hill separated from the employment at that time.

REASONING AND CONCLUSIONS OF LAW:

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 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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Administrative Code rule 871-24.26(4). The test is 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 213 (Iowa 2005).

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 weight of the evidence in the record establishes a voluntary quit on August 13, 2019 that was for good cause attributable to the employer. The evidence in the record establishes a voluntary quit based on large part on a substantial change in the conditions of the employment. From the start of the employment in April 2019 until August 1, 2019, Mr. Hill was assigned to provide direct care to clients that included assisting clients with routine hygiene. Effective August 1, 2019, the employer substantially changed the conditions of the employment by assigning Mr. Hill to perform wound care and assistance with extraordinary hygiene issues related to a client's colostomy bag. Many reasonable people in such position would find themselves incapable of providing such assistance. Prior to August 1, 2019, the employer had not provided notice to Mr. Hill that he would or could be called upon to provide such care. Mr. Hill resigned from the employment in a timely manner, rather than acquiesce in the substantial change in the conditions of the employment. The weight of the evidence also establishes a voluntary quit based in significant part on intolerable and detrimental working conditions. These included the derogatory racial epithets to which Mr. Hill was subjected during the employment, as well as Ms. Hoffmeier and Ms. Baggett's handling of the matter. The weight of the evidence establishes that the change of duties at the beginning of August 2019 was indeed in retaliation for Mr. Hill's prior complaints of race-based harassment and was likely intended to prompt a quit. The employer elected not to present testimony from Ms. Hoffmeier or Ms. Baggett. While Mr. Hill bore the burden of proving, by a preponderance of the evidence, that his quit was for good cause attributable to the employer, the absence of Ms. Hoffmeier and Ms. Baggett from the appeal hearing was conspicuous and lent weight to Mr. Hill's assertions of race-based harassment and retaliation. Mr. Hill is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The September 11, 2019, reference 01, decision is reversed. The claimant quit the employment on August 13, 2019 for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs