**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**CULBERTSON, TABATHA, J**
Claimant

**HCM INC**
Employer

**APPEAL NO. 12A-UI-09879-JTT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 07/01/12**
**Claimant: Respondent (4-R)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 8, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 7, 2012. Claimant participated. Amy Kelley represented the employer. Exhibit A was received into evidence.

**ISSUE:**

Whether the claimant 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: Claimant was employed as a part-time certified nursing assistant from January 2012 until June 14, 2012, when she voluntarily quit. The claimant was hired to work the 6:00 a.m. to 2:00 p.m. shift. The claimant averaged 30 hours per week.

On April 26, 2012, the claimant registered for a full-time nursing program at Iowa Western Community College. The claimant was to start her studies on August 20, 2012. Once the term began, the claimant's class schedule would be as follows. On Mondays, the claimant would start classes at 8:30 a.m. and finish at noon. On Tuesdays and Wednesdays, the claimant would start classes at 6:30 a.m. and finish at 3:30 p.m. On Thursdays, the claimant was start classes at 8:30 a.m. and finish at 2:00 p.m. On Fridays, the claimant would start at 8:30 a.m. and finish at 2:30 p.m. In other words, once the claimant's nursing studies began she would no longer be available to work her normal 6:00 a.m. to 2:00 p.m. work hours on Monday through Friday.

At the beginning of May 2012, the claimant notified the employer of her plan to go back to school. While the claimant asserts that the employer cut her work hours at the beginning of May in response to the notice that she was going back to school, there was actually no decrease in the claimant's average weekly hours through the last day of her employment. The claimant's work hours per two-week pay period throughout the employment were as follows. For the pay period ending February 2, the claimant worked 67.25 hours. For the pay period ending

February 16, the claimant worked 50.5 hours. For the pay period ending March 1, the claimant worked 54.25 hours. For the pay period ending March 15, the claimant worked 70 hours. For the pay period ending March 29, the claimant worked 59.25 hours. For the pay period ending April 12, the claimant worked 55.75 hours. For the pay period ending April 26, the claimant worked 60.5 hours. For the pay period ending May 10, the claimant worked 62 hours. For the pay period ending May 24 claimant worked 62 hours. For the pay period ending June 7, the claimant worked 55 hours. During the last week of the employment, from June 8-14, the claimant worked 23.25 hours.

The claimant asserts that she quit the employment in response to a recently posted schedule that the claimant asserts gave her reduced hours and after a supervisor allegedly told her she would have to get used to reduced hours in light of her decision to return to school.

**REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113) provides as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
>
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
>
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
>
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
>
> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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, 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).

On the other hand, when a worker voluntarily quits to go to school, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(26).

The evidence in the record does not support the lower decision that the claimant was laid off. The claimant was not laid off, but instead voluntarily quit the employment. Because the claimant voluntarily quit, the claimant had the burden of proving that her voluntary quit was for good cause attributable to the employer.

The question is whether the claimant voluntarily quit due to a substantial reduction in work hours or whether the claimant voluntarily quit in anticipation of beginning full-time college coursework. Neither the claimant nor the employer provided a copy of the July work schedule for the hearing. The claimant supervisors during the employment are no longer with the employer, but documented that the claimant had voluntarily resigned to return to school. The claimant made the unsupported allegation that there was a substantial reduction in work hours at the beginning of May. The employer's business records concerning her hours worked clearly indicate that there was no reduction in work hours at the beginning of May. Nor was there any reduction in work hours through the end of the employment. The claimant's assertion that she quit in response to a reduction in work hours is not credible. The claimant's false assertion of a substantial cut in work hours beginning in May calls into question the credibility and reliability of other testimony provided by the claimant when that testimony conflicts with the evidence presented by the employer.

The weight of the evidence indicates that the claimant quit for personal reasons, including her decision to go to school full time. The decision to go to school full time was going to eliminate the claimant's availability for most, if not all, of her regular work hours. The claimant's voluntary quit was without good cause attributable to the employer. The employer's account will not be charged. The claimant is disqualified for unemployment insurance benefits *based on base period wage credits earned through this employment* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

The claimant remains eligible for unemployment insurance benefits based on base period wages from employers *other than HCM Inc*., provided she is otherwise eligible. This matter will be remanded to the Claims Division for determination of whether the claimant has sufficient wage credits to be eligible for reduced unemployment insurance benefits based on base period employment *other than HCM, Inc.*

**DECISION:**

The Agency representative's August 8, 2012, reference 01,, decision is modified as follows. The claimant voluntary quit the part-time employment on June 14, 2012 without good cause attributable to the employer. The employer's account will not be charged. The claimant is disqualified for unemployment insurance benefits *based on base period wage credits earned through this employment* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant remains eligible for unemployment insurance benefits based on base period wages from employers *other than HCM Inc*., provided she is otherwise eligible. This matter will be remanded to the Claims Division for determination of whether the claimant has sufficient wage credits to be eligible for reduced unemployment insurance benefits based on base period employment *other than HCM, Inc.*

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/css