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

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

**JENNIFER K GREEN**
Claimant

**DIERKING, LOCKIE & ASSOCIATES PC**
Employer

**APPEAL NO. 09A-UI-02161-JTT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 01/04/09**
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Jennifer Green filed a timely appeal from the February 4, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing commenced on March 27, 2009 and concluded on April 24, 2009. Ms. Green participated personally and was represented by Attorney Robert Green. Mr. Green presented testimony through Ms. Green and through Lindi Spink. Attorney Jill Finken represented the employer and presented testimony through Terry Lockie, Barbara Wahlberg, Henry Wood, Susie Christensen, and Will Buell. The administrative law judge took official notice of the documents submitted for or generated in connection with the fact-finding interview. Exhibits A through F, J through P, and 1 through 28 were received into evidence.

**ISSUES:**

Whether Ms. Green voluntarily quit or was discharged from the employment. The administrative law judge concludes that Ms. Green voluntarily quit.

Whether Ms. Green'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: The employer is an accounting firm that provides various accounting, tax and payroll services to clients. In August 2007, Jennifer Green started her employment with Terry Lockie and Associates as a full-time staff accountant. Ms. Green was not yet a Certified Public Accountant (C.P.A.) at the time she worked for the employer. Ms. Green was hired at a $14.00 per hour wage. Ms. Green worked with other accountants, bookkeepers and support staff. Ms. Green's immediate supervisor was Terry Lockie, President and sole shareholder. At the start of the employment, Ms. Green and Ms. Lockie discussed a possible 55-hour work week during the busy tax season. Ms. Green thought this meant she would never be asked to work more than 55 hours per week. Ms. Lockie intended that the work week would average no more than 55-hours during tax season. The compensation arrangement was to be reviewed after 90 days.

In January 2008, Ms. Green became a salaried employee with a $33,000.00 salary. Ms. Green and the employer agreed that a production bonus would be part of the compensation package. The details of the production bonus plan were left for a later date. Ms. Green would have to bill 2,200 hours annually to qualify for the production bonus. In connection with becoming a salaried employee, Ms. Green enrolled in the employer's retirement plan.

During the course of Ms. Green's employment a couple of coworkers separated from the employer. In connection with these departures, Ms. Green assumed additional accounting and clerical duties. The clerical duties included answering the phone as needed. Ms. Green resented the phone duties and the distractions from her billable accounting duties.

Ms. Green worked full-time hours or greater than full-time hours throughout the employment. Greater than full-time hours were common during the tax season. Ms. Green found the long hours wearing and resented that they kept her from spending more time with her children. Ms. Green thought she worked longer hours than Ms. Lockie and resented the work schedule Ms. Lockie set for herself and time Ms. Lockie took off from the workplace.

A few months before the employment ended, Ms. Green and the employer discovered that the employer had not made appropriate contributions to Ms. Green's retirement account. The money--$200.00 per month—had been deducted from Ms. Green's pay. The failure to make the retirement account contributions was an oversight on the part of another staff accountant. When the employer learned of the matter, the employer made the appropriate contribution. The situation re-occurred toward the end of the employment and the employer again made the appropriate contribution.

Ms. Green received the production bonus plan details in August 2008. Ms. Green believed the plan details were different than those she had discussed with Ms. Lockie at the time she became a salaried employee. Ms. Green continued in the employment nonetheless.

In early December 2008, Ms. Green decided to open a Liberty Tax franchise to do simple income tax returns. This venture would place her in competition with the employer who also did income tax returns. Ms. Green hired support staff employee Lindi Spink away from Lockie & Associates to be her office manager at Liberty Tax. On December 8 or 9, Ms. Spink gave her notice to Lockie & Associates that she would be leaving her support staff position. On or about December 15, Ms. Green signed her franchise agreement with Liberty Tax. The franchise office was scheduled to open in early January 2009.

On December 8, 2008, Ms. Green met with Owner Terrie Lockie and told her she was burnt out. Ms. Green told Ms. Lockie that could not continue to work the long hours the job required and could not continue to spend as much time away from her children. Ms. Green told Ms. Lockie she would be submitting a letter of resignation the next day. Ms. Lockie wanted Ms. Green to continue in the employment and offered changed conditions that would address Ms. Green's concerns. Ms. Lockie proposed an 8:30 a.m. to 5:00 p.m. work schedule and a $18.00 hour wage. Ms. Green agreed to think about it.

Later in the month, Ms. Green and Ms. Lockie discussed the production bonus. Ms. Lockie believed Ms. Green had not billed sufficient hours to qualify for the production bonus. Ms. Lockie offered a $500.00 bonus, the amount she had advanced to Ms. Green to cover C.P.A. instruction materials. Ms. Green thought she had earned much more than $500.00 in bonus. Ms. Green had been working on larger projects for which the employer did not bill on a regular basis. This made calculating the applicable bonus difficult until the project was

completed. Ms. Lockie agreed to review billing records to see whether any additional bonus was due.

On December 30, Ms. Lockie left on vacation. Ms. Lockie was scheduled to return on January 12. On December 31, Ms. Lockie called to check on the office. At that time, Barbara (Bobbie) Wahlberg, asked Ms. Lockie whether she knew that it was Ms. Green's last day in the job. Ms. Green had announced to the staff that she was leaving the employment. Ms. Wahlberg had asked Ms. Green whether she had advised Ms. Lockie of this. Ms. Green had told Ms. Wahlberg that Ms. Lockie should not be surprised. Shortly after Ms. Lockie finished her call with Ms. Walhlberg, she called back and spoke with Ms. Green. Ms. Green told Ms. Lockie that it was her last day. Ms. Green told Ms. Lockie that Ms. Lockie had so insulted her with the proposed $500.00 bonus that Ms. Green was leaving the employment.

Ms. Green returned to the office on January 5, 2009 to collect her final paycheck. The office manager had left instructions with the receptionist to collect Ms. Green's key when she came for her check. Ms. Green and Ms. Spinks came to the office together. The receptionist provided Ms. Green her paycheck. The receptionist then requested that Ms. Green provide her key. Ms. Green asked whether the receptionist was refusing to provide her paycheck unless she returned the key. The receptionist had already provided the paycheck. Nonetheless, Ms. Green repeated the question of whether the receptionist was refusing to provide her last paycheck unless she turned over her key. Ms. Green handed the receptionist her key. Ms. Green had the key ready in her pocket, not on a keychain. Ms. Green then abruptly departed from the office.

**REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The weight of the evidence fails to establish a discharge. The evidence indicates instead that the employer wanted Ms. Green to continue in the employment and was willing to change the conditions of employment so that Ms. Green would continue in the employment. The employer continued to have work available for Ms. Green. The employer was approaching the busy tax season, when Ms. Green's help would be especially needed. The administrative law judge finds not credible Ms. Green's assertions that she had scheduled herself out of the office during the first days of January, but expected to return to work on or about January 5. The request for Ms. Green's key on January 5, 2009 in no way effected a discharge. A reasonable person in Ms. Green's position would not have viewed the interaction as a discharge. The January 5 interaction had the hallmarks of a staged exchange—an attempt to make a simple request for a return of a key after a quit appear to be something more than it was.

The weight of the evidence establishes a voluntary quit. Ms. Green had told Ms. Lockie on December 8 that she intended to resign from the employment. At the time, Ms. Green was already in the process of securing and opening her own Liberty Tax franchise and had hired away a Lockie & Associates employee, Ms. Spinks. Ms. Green had entered into a

self-employment venture that put her in competition with the employer. Ms. Green advised coworkers that her last day would be December 31, 2008. Ms. Green had announced to coworkers that Ms. Lockie had insulted her by the proposed $500.00 bonus. Ms. Green told Ms. Lockie on December 31 that it was her last day. Ms. Green did not return until January 5. Ms. Green returned at that point only for the purpose of collecting her check and returning her key, not to report for work.

The remaining question is whether Ms. Green's voluntary quit was for good cause attributable to the employer.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 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 (Iowa 2005).

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).

When a person quits due to dissatisfaction with the work environment, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21).

Where a person voluntarily quits employment to pursue self-employment, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(19).

Ms. Green cites a laundry list of complaints about the employment, some more legitimate than others. The weight of the evidence indicates that the long hours were part of the employment from the beginning and that Ms. Green acquiesced in the hours until December. At that point, the employer indicated she was willing to amend the conditions of employment to limit the number for hours. The weight of the evidence indicates that Ms. Green had a legitimate concern about money not being deposited in her retirement account in a timely fashion. The evidence indicates that the employer acted in good faith to correct the retirement account issues when they came to the employer's attention. The evidence indicates that Ms. Green had a good faith disagreement with the employer regarding the amount of bonus she was due. The evidence indicates that the employer had agreed to further review the matter. The evidence indicates that a reasonable person in Ms. Green's position would not have felt compelled to leave the employment over this issue, but would have worked to resolve it with the employer. The evidence indicates that Ms. Green's additional complaints about the work environment amounted to general dissatisfaction with Ms. Lockie's business decisions.

The weight of the evidence indicates that it was Ms. Green's decision to pursue to a Liberty Tax franchise that provided the primary basis for her quit. The evidence indicates that the quit was timed so that it would occur on the last day of the year and so that Ms. Green would be able to open her new business early in January 2009 to take advantage of the busy tax season.

The weight of the evidence fails to establish intolerable or detrimental working conditions that would have compelled a reasonable person to quit the employment. The weight of the evidence indicates that any changes in the conditions of the employment were reached by agreement between Ms. Green and the employer or had occurred so early in the employment that they became part of the established conditions of the employment.

The administrative law judge concludes that Ms. Green voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Green is disqualified for benefits 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 employer's account shall not be charged for benefits paid to Ms. Green.

**DECISION:**

The Agency representative's February 4, 2009, reference 01 decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits 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 employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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