

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD C TRUDE
Claimant

APPEAL NO. 07A-UI-07710-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HILL OF CLINTON LLC
COUNTRY KITCHEN**
Employer

**OC: 07/15/07 R: 04
Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Hill of Clinton/Country Kitchen filed a timely appeal from the August 7, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 27, 2007. Claimant Richard Trude participated. Owner Wayne Hill represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

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: Richard Trude was employed by Country Kitchen as a full-time cook from April 1, 2004 until July 5, 2007, when he voluntarily quit. Mr. Trude's immediate supervisor was owner Wayne Hill. Cook Jolene Burgrabe prepared the work schedule for Mr. Hill and shared discretion with Mr. Hill regarding whether to approve or deny requests for time off. On July 5, Mr. Trude arrived at work to find that he had been docked one hour's wages for a shift he worked a few days before. The employer had called Mr. Trude in to work the shift when another cook walked off the job. Mr. Trude had worked the shift and then had left after being assured by another cook that the other cook would complete necessary cleaning duties. On July 5, when Mr. Trude asked why he had been docked wages, Ms. Burgrabe told him it was because the duties had not been properly performed on the prior shift. When Mr. Trude asserted that he had been jointly responsible for the duties and the other employee had agreed to perform them, Ms. Burgrabe said it did not matter. Mr. Trude then asked Ms. Burgrabe why he had not been granted July 12-14 off after he had submitted a written request to have the time off for a medical appointment. Ms. Burgrabe told Mr. Trude that she had not received any "fucking request" and threw the clipboard containing the schedule at Mr. Trude or in Mr. Trude's vicinity. Mr. Trude said he was quitting and left. Mr. Trude notified law enforcement that Ms. Burgrabe has assaulted him by throwing the clipboard at him. Because there were no witnesses to the

incident other than Mr. Trude and Ms. Burgrabe, the investigating officer decided not file a charge.

REASONING AND CONCLUSIONS OF LAW:

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.

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).

The weight of the evidence establishes two independent good-cause reasons for Mr. Trude's quit. The first is the employer's act of denying Mr. Trude wages for the work he had performed. This action constituted a significant change in the conditions of Mr. Trude's employment and

would, in and of itself, be an intolerable working condition that would provide good cause for a quit. The second good-cause basis for the quit was Ms. Trude's offensive language and aggressive behavior on July 5. Both matters created intolerable and/or detrimental working conditions that might have prompted a reasonable person to quit the employment.

Mr. Trude quit the employment for good cause attributable to the employer. Accordingly, Mr. Trude is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Trude.

DECISION:

The Agency representative's August 7, 2007, reference 01, decision is affirmed. The claimant quit the employment 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 paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw