IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SOLGAT, ANGELIQUE, M
Claimant

HY-VEE INC
Employer

APPEAL NO. 13A-UI-00036-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/02/12
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Angelique Solgat filed a timely appeal from the December 31, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 5, 2013. Ms. Solgat participated. Pamela Kiel of Corporate Cost Control represented the employer and presented testimony through Lindsay Flanigan, Manager of Perishables. Exhibits One through Eight were received into evidence.

ISSUE:

Whether Ms. Solgat's voluntary quit was for good cause attributable to the employer. It was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Angelique Solgat was employed by Hy-Vee as a part-time salad bar clerk from January 2011 until November 28, 2012, when she voluntarily quit. Ms. Solgat generally worked about 20 hours per week, but did not have a set schedule. Ms. Solgat's immediate supervisor was Cheri Kenealy, Salad Bar Manager. Ms. Kenealy reported to Chad Thacker, Manager of Perishables. The employer had scheduled a meeting with Ms. Solgat for Thursday, November 29, 2012 to discuss her attendance. On November 28, Ms. Solgat telephoned the workplace and spoke to Lindsay Flanigan, Manager of Perishables. Ms. Solgat told Ms. Flanigan that she was quitting, that the job was not working out, and that she had personal issues.

Ms. Solgat's personal life and her employment situation turned for the worse in August 2012. During August, Ms. Solgat's husband separated from Ms. Solgat and her two small children. On August 28, 2012, Ms. Solgat was absent from work at Hy-Vee and failed to notify the employer. If Ms. Solgat needed to be absent from work, the employer's written attendance policy required that she personally telephone the store director or a supervisor prior to the scheduled start of her shift. Ms. Solgat had been provided with a copy of the employee handbook that contained the policy and was aware of the policy. On August 29, 2012, Ms. Solgat was again absent. Ms. Solgat telephoned Ms. Kenealy three hours after the scheduled start of her shift to advise that she had just been released from jail and that she intended to nap for the rest of the day. On September 3, 2012, Ms. Kenealy issued a written reprimand to Ms. Solgat for attendance.

In September 2012, Ms. Solgat started counseling to address diagnoses of manic depression and bipolar disorder. Ms. Solgat initially met with three different counselors three times per week. Ms. Solgat was eventually able to get her counseling appointments with the three counselors coordinated so that she could attend all three on Tuesdays. Since the appointments were scheduled for morning and afternoon, this made Ms. Solgat unavailable to work for the employer on Tuesdays. Ms. Kenealy made Ms. Solgat's work schedule. Ms. Kenealy agreed to work with Ms. Solgat to ensure that she had time off to attend her counseling sessions. The employer expected Ms. Solgat to notify the employer in advance regarding the time she needed to take.

On Monday, November 19, Ms. Solgat was on the schedule to work from 8:00 a.m. to 3:00 p.m. At 1:30 p.m., Ms. Solgat told the new assistant manager for the department, Jody Clark, that she needed to leave to get her son. Ms. Solgat's son was a kindergartner and Ms. Solgat needed to collect him from school at 1:45 p.m. Ms. Clark asked if Ms. Solgat would be coming back. Ms. Solgat said she was not going to return. Ms. Solgat did not want to drive across Council Bluffs to collect her son and drop him off at home only to drive back across town to return to work. Ms. Solgat had previously told Ms. Kenealy of her need to leave in time to collect her son from school on Mondays, but Ms. Kenealy had continued to schedule Ms. Solgat to work on Monday afternoons. On November 24, Mr. Schwarting issued a written reprimand in connection with the early departure on November 19. In the reprimand, Mr. Schwarting notified Ms. Solgat that, "will cut down hours until she feels that she is able to work with out [sic] any problems." At the time of the reprimand, Ms. Solgat told Mr. Schwarting that she felt like she was backed into a corner and that her choices were to quit or be fired. Mr. Schwarting told Ms. Solgat that he understood that was how she felt, but that he could not make her decisions for her. Mr. Schwarting later scheduled a meeting for November 29 to discuss Ms. Solgat's attendance issues. Ms. Solgat voluntarily quit before that meeting could take place. Ms. Solgat voluntarily quit before there was any change or reduction in her work hours.

Hy-Vee was Ms. Solgat's sole base period employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

When an employee voluntarily quits in response to a reprimand, the quit is presumed to be without good cause attributable to the employer. See Iowa Admin. Code rule 871 – 24.25(28).

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 does not support Ms. Solgat's assertion, which she attributes to a counselor, that the November 29 meeting was "an ambush." The weight of the evidence indicates instead, that Ms. Solgat had raised a concern at the time of the November 24 reprimand that both she and the employer felt needed to be addressed. The employer was concerned about Ms. Solgat's attendance issues. Ms. Solgat was concerned that her job was in jeopardy. While the employer had warned of an impending cut in hours "until she feels that she is able to work with out [sic] any problems," Ms. Solgat quit before any cut in hours was implemented. Ms. Solgat quit in the context of the employer's agreement to meet to discuss, and presumably work toward resolving, both parties' concerns. Ms. Solgat cut that process short through her voluntary quit on November 28, 2012. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Solgat voluntarily quit without good cause attributable to the employer. Accordingly, Ms. Solgat 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.

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.

Because Hy-Vee was Ms. Solgat's sole base period employer, there are no other base period wages upon which reduced benefits might be based and Ms. Solgat is not eligible for reduced benefits.

DECISION:

The Agency representative's December 31, 2012, 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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