

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI S HEINEMANN
Claimant

APPEAL NO. 13A-UI-09818-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRIPOLI NURSING & REHAB
Employer

OC: 07/28/13
Claimant: Respondent (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 20, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 30, 2013. Claimant participated. Heather Sells represented the employer. Exhibits One through 12 were received into evidence.

ISSUE:

Whether Ms. Heinemann'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: Jodi Heinemann was employed by Tripoli Nursing & Rehab from March 2012 until July 26, 2013, when she voluntarily quit due to a change in her working conditions. Ms. Heinemann had started the employment as a full-time Certified Nursing Assistant. In April 2012, Ms. Heinemann began to work for the employer part-time as a rehab/restorative aide. Ms. Heinemann continued to be *scheduled* for part-time hours as a Certified Nursing Assistant after she started working part-time as a restorative aide. However, soon Ms. Heinemann became a full-time Restorative Aide and ceased being *scheduled* for CNA shifts. The employer defines full-time status as 32 hours or above. For the most of the employment, Ms. Heinemann worked *at least* four shifts, 32 hours, per week as a Restorative Aide. Ms. Heinemann continued to *pick up* an occasional CNA shift to boost her income and to assist the employer. The CNA work paid \$10.40 per hour. The Restorative Aide work paid \$10.90 per hour. The Restorative Aide position required at least a year of CNA experience and required that Ms. Heinemann complete a Certified Rehab Assistant course. The Restorative Aide position involved providing therapeutic rehabilitation services to residents to assist them with building strength, balance and other physical abilities. The CNA position involved assisting residents with activities of daily living such as hygiene and getting in and out of bed. The Rehab hours were 7:00 a.m. to 3:00 p.m. or 7:30 a.m. to 3:30 p.m. When Ms. Heinemann picked up CNA shifts, they were generally evening or overnight shifts.

During the latter part of July 2013, Heather Sells, Administrator, notified Ms. Heinemann that she was going to change Ms. Heinemann's work arrangement. She did so after one or more employees made unsubstantiated allegations that Ms. Heinemann was documenting but not actually providing restorative services to residents. The employer was unable to confirm the allegations and did not issue any reprimands to Ms. Heinemann in connection with the allegations. Ms. Heinemann at all times insisted she was performing her assigned restorative aide duties. Ms. Sells told Ms. Heinemann that going forward, Ms. Heinemann would be *scheduled* for one or two CNA shifts *per week*. The employer had experienced an increase in resident census and had both additional Restorative Aide hours and CNA hours to distribute. Rather than give the additional Restorative Aide hours to Ms. Heinemann, Ms. Sells decided to give those additional Restorative Aide hours to a CNA who had recently begun to work part-time as a Restorative Aide. In addition, if the employer followed through with *scheduling* Ms. Heinemann for two CNA shifts per week, Ms. Heinemann would be surrendering one of her four core Restorative Aide shifts to the new part-time Restorative Aide, effectively taking her to part-time status in the Restorative Aide position. Ms. Sells told Ms. Heinemann that she was making the scheduling change because of the concerns that some other employees had raised.

The three-week schedule that Ms. Sells posted on July 26 reflected the change. For two of the weeks, Ms. Sells still had Ms. Heinemann on the schedule to work at four shifts per week in the rehab position and one CNA shift, 6:00 a.m. to 2:00 p.m. For the other week, Ms. Sells scheduled Ms. Heinemann to work five Restorative Aide shifts. When Ms. Heinemann saw the change to her work schedule, she asked to return to the previous scheduling arrangement whereby she would be *scheduled* exclusively for restorative aide hours. Ms. Sells refused to comply with that request. Ms. Sells reiterated her intention to schedule Ms. Heinemann for one or two CNA shifts per week. Ms. Heinemann asserted that she was being demoted. Ms. Heinemann then asked for a leave of absence and the employer denied that request. Ms. Heinemann ceased reporting for work after July 26, 2013.

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.

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 evidence in the record does establish a substantial change in the conditions of the employment. During the hearing the employer provided contradictory evidence. On the one hand the employer asserted through testimony that there would be no cut to Ms. Heinemann's hours as a Restorative Aide and that there would only be the addition of a CNA shift per week. However, the employer presented other evidence indicating that Ms. Heinemann had often worked 40 hours per week as a Restorative Aide, not just 32. In addition, the employer's Exhibit Three, the July 30 e-mail, clearly states an intention to have Ms. Heinemann work "a day or 2 on the floor," indicating an intent to *decrease* her work hours in the rehab area. For any week that the employer scheduled Ms. Heinemann for two hours of CNA work, the employer would be reducing Ms. Heinemann to part-time status. Any reduction in Ms. Heinemann's rehab hours was in fact a change in the established conditions of the employment. Ms. Heinemann correctly perceived the change as a demotion. The change would be a 50 cent per hour cut in pay for each and every hour the employer had Ms. Heinemann work as a CNA instead of a Restorative Aide. Ms. Heinemann declined to acquiesce in the substantial change and left the employment.

Ms. Heinemann voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Heinemann is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The agency representative's August 20, 2013, reference 01, decision is affirmed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she 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/pjs