

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANN PAULSEN
Claimant

APPEAL NO. 11A-UI-00687-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

OC: 12/12/10
Claimant: Respondent (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 10, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 22, 2011. Claimant participated and presented additional testimony through Andrea Meyers. Robin McMillan represented the employer.

ISSUE:

Whether the claimant's voluntary quit was for good caused attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ann Paulsen was employed by Dillard's, Inc, as a full-time sales manager until January 22, 2010, when she voluntarily quit the employment. Ms. Paulsen started the employment as a sales associate in 2005, was soon appointed to a sales manager position and eventually supervised three departments. In early 2010, the employer began to change the nature of Ms. Paulsen's duties. At the same time, the employer changed the nature of the duties assigned to other management staff in the Council Bluffs store where Ms. Paulsen worked. In addition to her regular sales manager duties, which involved overseeing three departments, the employer added responsibilities related to receiving and processing clearance merchandise trucked to the Council Bluffs store from two or three sister stores.

Toward the end of the employment, the employer dramatically increased the amount of clearance merchandise sent to the Council Bluffs store. Instead of receiving clearance merchandise from two or three stores, the Council Bluffs store began to receive clearance merchandise from eight or nine stores. Ms. Paulsen was so busy with unloading and processing clearance merchandise for sale, that she could not perform essential aspects of her sales manager duties. This included not being able to make the minimum monthly sales amount the employer expected of all sales managers and being able to properly supervise her assigned departments. The changes the employer made to Ms. Paulsen's duties significantly changed the conditions of Ms. Paulsen's employment. Prior to going to work for the Council Bluffs store, Ms. Paulsen had gone through a similar experience at the Omaha store.

Ms. Paulsen decided not to acquiesce in working in another designated “clearance store” and elected to quit the employment instead. Ms. Paulsen’s immediate supervisor was well aware of the negative impact the additional duties had on Ms. Paulsen’s ability to perform her duties and was well aware that Ms. Paulsen’s opposition to shouldering the clearance freight duties.

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 in the record establishes both significant changes in the conditions of employment and detrimental working conditions. The significant changes centered on the fundamental altering of Ms. Paulsen's work duties as the employer transitioned the Council Bluffs store from a regular retail store to a clearinghouse for its clearance merchandise. This was not merely a change in the conditions of employment. Instead, it was a significant addition of work duties that made it impossible for Ms. Paulsen to perform the duties she had previously performed and which she was still charged with performing. The employer created a situation that was overwhelming to Ms. Paulsen and other staff. Ms. Paulsen did not acquiesce in the changes in the employment. The working conditions would have prompted a reasonable person to leave the employment.

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

DECISION:

The Agency representative's January 10, 2011, reference 01, decision is affirmed. The claimant voluntarily 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/kjw