IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TEONA L FOSTER
Claimant

TWIN CITY TANNING WATERLOO LLC
Employer

APPEAL NO. 17A-UI-00981-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/23/16
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Teona Foster filed a timely appeal from the January 23, 2017, reference 02, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Foster voluntarily quit on January 3, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 16, 2017. Ms. Foster participated personally and was represented by attorney Matthew Reilly. Jesse Crane represented the employer and presented additional testimony through Rusty Truax. No exhibits were submitted for the hearing or received into evidence.

ISSUE:

Whether Ms. Foster'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: Teona Foster was employed by Twin City Tanning Waterloo, L.L.C., as a full-time lab technician from April 2014 until January 3, 2017, when she voluntarily quit. On December 5, 2016, Ms. Foster emailed her resignation to employer and indicated that January 3, 2017 would be her last day in the employment. Ms. Foster did not provide a reason for her quit in the email message.

From the beginning of the employment until September 6, 2016, the employer had provided, and Ms. Foster had worked, full-time hours. During that period, Ms. Foster's work hours were 7:00 a.m. to 3:30 p.m., Monday through Friday.

In 2016, Ms. Foster and her coworkers voted to unionize the workplace and succeeded in unionizing the workplace. Thereafter, Ms. Foster assumed a leadership role in collective bargaining.

On or about August 26, 2016, Ms. Foster and other employee and union leaders appeared for a meeting with the business owner, James Grove. Rusty Truax, Plant Manager, was also present for the meeting. The meeting was supposed to be about negotiating employee wages. Other collective bargaining issues had been addressed at earlier meetings. On August 26, Mr. Grove

immediately took control of the meeting. Mr. Grove accused the employee group of demanding a 40 percent pay increase and paid holidays. Mr. Grove asserted that if that was the way it was going to be, the he would just lock up the plant. Mr. Grove directed the employees' attention to a white board in the conference room. On the white board, Mr. Grove had outlined a cross-the-board cut in employee work hours. Mr. Grove did not reference any supply issues or construction issues as a basis for the cut in hours. Rather, his words and actions at the time, tie the cut back in hours directly to the collective bargaining process.

Pursuant to the cut in hours announced by Mr. Grove on August 26, Ms. Foster's work hours were to go to 32 per week. She was thereafter supposed to work her usual eight-hour shifts Monday, Wednesday and Friday, and two four-hour shifts, from 7:00 a.m. to 11:00 a.m., Tues and Wednesday. In response to the notice of changed work hours, Ms. Foster requested four full workdays, rather than three full work days and two half days. Ms. Foster made the request in light of her 45-mile commute. The employer approved a work schedule whereby Ms. Foster worked 7:00 a.m. to 3:00 p.m. four days per week for a total of 30 hours per week. This schedule went into effective September 6, 2016.

Later in September, Mr. Grove told Ms. Foster that her work hours would return to full-time when the collective bargaining agreement was voted upon. Based on the employer's statement that her hours would return to normal once the collective bargaining process was done, Ms. Foster elected to remain in the employment. The collective bargaining agreement was approved in October 2016.

After that collective bargaining agreement was approved, the employer increased production and increased work hours for many of the plant's 50 to 60 employees. However, the employer did not increase Ms. Foster's work hours. On or about November 13, 2016, Ms. Foster asked her supervisor, Jess Crane, Environmental/Safety Manager, when she would be returning to her full-time work hours. Mr. Crane told Ms. Foster that he would have to speak with the Plant Manager, Rusty Truax, about Ms. Crane's work hours.

On December 4, Ms. Foster again asked Mr. Crane when her hours would return to full-time. Mr. Crane told Ms. Foster that he had spoken to Mr. Truax and that Mr. Truax had said the matter was out of his hands. Ms. Foster understood the information to mean that Mr. Grove had decided not to return Ms. Foster to full-time hours. On the next day, Ms. Foster submitted her resignation email. Ms. Foster also filed formal complaints with the National Labor Relations Board asserting that the employer had retaliated against her for her role in unionizing the workplace.

Though the employer witnesses now asserts that the cut in hours was due to supply problems and construction that interfered with production, the weight of the evidence indicates that the reduction in work hours was in retaliation for union activities, specifically wage demands. The construction in question was in a warehouse area and did not impact production. The hide supply issue appears to have been a pretext for cutting work hours in retaliation for unionizing activities.

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.

Iowa Admin. Code r. 871-24.26(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).

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).

The weight of the evidence in the record establishes a voluntary quit that was based on a change in the contract of hire and intolerable and detrimental working conditions. The change in the contract of hire was the employer's reduction of the work hours from 40 per week to 32 per week. The reduction in work hours cut Ms. Foster's wages by 20 percent. Ms. Foster did not acquiesce in a permanent change in the conditions of her employment. Instead, Ms. Foster relied upon the employer's representation that the hours would return to full-time once the collective bargaining agreement had been finalized. When Ms. Foster received the information that her work hours would not be returning to full-time despite finalization of the collective bargaining agreement, she promptly submitted her quit notice. Ms. Foster reasonably concluded that Mr. Grove had personally made the decision not to return her hours to full-time. Ms. Foster reasonably concluded that Mr. Grove's decision was in retaliation for her leadership role in unionizing activities. The business owner specifically linked the reduction in work hours

to the unionizing activities. That conduct and the subsequently refusal to restore Ms. Foster's hours to full-time constituted intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment.

The administrative law judge notes that the employer elected not to have Mr. Grove participate in the appeal hearing. The weight of the evidence establishes that the purported supplier and constructions issues, which were conspicuously omitted by the employer at the time of the cut in hours, are belated rationalizations offered by the employer in the context of Ms. Foster's complaint to the National Labor Relations Board.

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

DECISION:

The January 23, 2017, reference 02, decision is reversed. 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs