IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

EULA M GUIDER Claimant **LONGHOUSE NORTHSHIRE LTD** Employer	**APPEAL 16A-UI-07576-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/12/16** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 29, 2016 (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quitting without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on July 29, 2016. The claimant, Eula M. Guider, participated personally. The employer, Longhouse Northshire LTD, participated through Director of Nursing Rosemary Hibbs and Administrator Tim Christy.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as Certified Nursing Assistant. She began working for this employer on November 5, 2014 and her employment ended on March 21, 2016. She worked approximately 24 hours per week. This company runs an assisted living facility. Claimant's job duties included assisting residents with daily living tasks. Her immediate supervisor was Ms. Hibbs.

During the course of her employment claimant believed that she was not being paid correctly. She contended that she did not get paid an extra $1.00 per hour at the beginning of her employment when she worked weekend shifts. She eventually quit working weekend shifts and switched to shifts during the week. Employer did not have any program in place wherein claimant would have earned an extra $1.00 per hour for working during the weekends. Claimant did work the overnight shift when she first began employment; however, she was paid correctly for the overnight shifts she worked.

Claimant contends that she was told during her interview with Mr. Christy on October 20, 2014 that she would receive a $1,000.00 sign on bonus which would be paid quarterly over the course of her first year of employment. Mr. Christy testified that this sign on bonus was not

created until October 22, 2014 and that he would not have discussed any sign on bonus with claimant at the time of the interview because it did not exist. The employer did have an incentive bonus in 2014. The incentive bonus was paid dependent upon an employee completing all continuing education classes that were assigned to them and contingent upon the employee not using sick leave or being tardy during the pay period. It was paid as a specific increase in the employee's hourly rate of pay, not as a lump sum. Claimant confirms that only one type of bonus was discussed during the interview with Mr. Christy. Claimant was not paid the incentive bonus at any time during the course of her employment because she did not complete the required continuing education classes.

Claimant contends that she was owed and not paid double pay for the extra dates she worked on February 3, 2016; February 12, 2016 and February 13, 2016. The employer does have a written policy in place wherein employees can accept extra shifts in addition to those that they are originally scheduled for. They will be paid double pay for those extra shifts so long as they work all of their originally scheduled shifts during that same two week pay period. Claimant was not paid double pay for these dates because she did not work all of her originally scheduled shifts during the same two week pay period. Ms. Hibbs explained this to claimant when she inquired why she was not paid double pay for those dates.

Claimant contends that she was only paid for three of the six sick days she requested in August of 2015. Claimant contends that she was only paid for one of the three vacation days that she requested in February of 2016. Employer contends that claimant was paid appropriately for each sick day and vacation day that was approved for her to use.

Claimant called off work on March 12, 2016; March 14, 2016; March 16, 2016; March 18, 2016; March 19, 2016; and March 21, 2016. Claimant called off work on March 14, 16, 18, 19, and 21, 2016 due to illness. Claimant called off work on March 12, 2016 and stated that she was not working two weekends in a row and didn't get paid extra last time. Claimant told the receptionist who answered the telephone on March 21, 2016 that she wanted taken off the schedule. Claimant did not report to work at any time after that telephone call on March 21, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

Iowa Code § 96.5(2)a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Claimant voluntarily quit on March 21, 2016 when she told the receptionist that she wanted taken off the schedule. Claimant never showed up to work after she left this message.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). In this case claimant voluntarily quit because she contends she was not being paid according to her contract of hire.

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.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

The decision in this case rests, at least in part, upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that the Employer's version of events is more credible.

Claimant remembers only speaking to Mr. Christy about one type of bonus during her interview with him. Mr. Christy credibly testified that the sign on bonus was not yet in effect until after her interview, so he would not have discussed it with her. Ms. Hibbs credibly testified that claimant did not complete her continuing education classes during the entire course of her employment and was therefore not eligible for the incentive bonus. Ms. Hibbs credibly testified that claimant was absent for her regularly scheduled shifts during the February dates claimant took additional shifts and was not entitled to double pay for those additional shifts due to her absences in those pay periods. Mr. Christy credibly testified that claimant was paid her sick pay and vacation pay appropriately and in fact did not pick up her final check which included payment for her accrued vacation pay hours.

Although claimant was not required by law to give the employer notice of her intent to quit, the change to the terms of hire must be substantial in order to allow benefits. It is claimant's burden

to establish a change in the contract of hire. Claimant has not met her burden of proof in establishing that the original terms of hire included these bonuses or that she qualified for these additional payments in accordance with the employer's policies. As such, claimant's voluntary quit was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The June 29, 2016 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.

_____
Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

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