

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA J WASKO
Claimant

APPEAL NO. 13A-UI-02733-JTT

**ADMINISTRATIVE LAW JUDGE
NUNC PRO DECISION**

CARE INITIATIVES
Employer

OC: 02/03/13
Claimant: Respondent (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 5, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 3, 2013. Claimant Amanda Wasko participated. Tony Kerr of Equifax Workforce Solutions represented the employer and presented testimony through Cindy Hambly, Kathleen Lashbrook, and John Haugen. Exhibits One through Seven were received into evidence.

ISSUE:

Whether Ms. Wasko's voluntary quit was for good cause attributable to the employer. It was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Amanda Wasko was employed by Care Initiatives, doing business as Windsor Nursing and Rehabilitation Center in Waterloo, as a full-time certified nursing assistant from June 2012 until February 1, 2013, when she voluntarily quit. Ms. Wasko's supervisor was Cindy Hambly, Director of Nursing. Ms. Hambly had become Director of Nursing in October 2012. Ms. Hambly made Ms. Wasko's work schedule.

Ms. Wasko quit in response to the employer's last-minute directive that she work a double shift, 16 hours, to start at 2:00 p.m. on February 1, 2013 and to end at 6:00 a.m. on February 2. Ms. Wasko had just left the workplace at 6:17 a.m. on February 1, after working her regular 10:00 p.m. to 6:00 a.m. shift on January 31-February 1. At the time Ms. Wasko left that morning, she was aware that she was next scheduled to work from 10:00 p.m. on February 1 to 6:00 a.m. on February 2.

At 10:00 a.m. on February 1, Cindy Hambly, Director of Nursing, sent a text message to Ms. Wasko directing her to report to work at 2:00 p.m. on February 1. Ms. Wasko was initially confused by the message and did not initially understand that Ms. Hambly was directing her to work a double-shift. Ms. Wasko thought at first that the employer was moving her from the overnight shift to the evening shift on February 1. Ms. Wasko sent a text message back asking Ms. Hambly whether she was still supposed to work the shift that started at 10:00 p.m. on

February 1. Ms. Hambly replied yes she was. At that point, Ms. Wasko thought perhaps the employer just wanted her come in for a CNA training meeting at 2:00 p.m. Ms. Wasko had previously been absent from a CNA training meeting and thought perhaps the employer just wanted her to make up the missed meeting. Ms. Wasko sent a text message asking Ms. Hambly whether she should wear her uniform. Ms. Hambly replied that she did indeed need to dress to work on the floor starting at 2:00 p.m. Ms. Wasko sent a text message to Ms. Hambly stating that she did not understand why she had to come in at 2:00 p.m. Ms. Hambly responded that it was because Ms. Wasko had not stayed to perform extra work beyond the end of her regular shift that morning. When it became clear to Ms. Wasko that the employer was requiring her to work a 16-hour double shift, she told Ms. Hambly that she was not going to work a double-shift and that she was going to quit. Ms. Hambly told Ms. Wasko that was her choice.

On January 10, Ms. Wasko had threatened to quit after Ms. Hambly scheduled her for 16-hour double shifts on consecutive days. Ms. Hambly had Ms. Wasko on the schedule to work 16 hours on January 10 and 11. Ms. Wasko had just received her work schedule on January 10. When the employer offered to take one of the double-shifts away, Ms. Wasko said she would just work it. Ms. Wasko did not want to lose the hours on the weekly schedule and the associated wages. Ms. Hambly later told Ms. Wasko bluntly that she did not “give a shit” that the scheduled double-shifts were upsetting to Ms. Wasko.

Earlier in the employment, Ms. Wasko had been more willing to work double-shifts. Ms. Wasko suffers from epilepsy and takes medication to help control the disorder. Ms. Wasko had notified the employer at the start of the employment that she suffered epilepsy. About a month before she quit, Ms. Wasko had suffered a seizure at home. Ms. Wasko believed that her work stress contributed to her having the seizure. This was a factor in Ms. Wasko subsequent dislike for working double-shifts. Ms. Wasko’s decision to leave the employment was made in the absence of advice from a doctor.

Ms. Wasko quit, in part, because the employer was chronically understaffed at that this was why the employer expected her to work double-shifts. While the employer’s handbook indicated that the employer could not compel employees to work double-shifts, the employer did not follow that provision of the handbook in practice, as indicated by the text message exchange on February 1.

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).

The weight of the evidence establishes that Ms. Wasko quit due to intolerable and detrimental working conditions. The weight of the evidence indicates that the employer demanded that Ms. Wasko work a 16-hour double shift on February 1. The employer did not ask Ms. Wasko whether she wanted to work a double-shift that day. The employer did not suggest to Ms. Wasko that she could elect not to work the double-shift that day. Ms. Hambly clearly was not following its own purported written policy that day and previously bluntly stated her feeling on the matter. Ms. Wasko had just left work at 6:17 a.m. the morning of February 1. Ms. Wasko had left work with the understanding that she was to work at 10:00 p.m. on February 1. The employer's text messages to Ms. Wasko started at 10:00 a.m., just four hours before the employer expected her to appear to start the 16-hour double shift and less than four hours after Ms. Wasko had left the workplace. The employer knew that Ms. Wasko would have to appear for the 16-hour shift without adequate sleep. The employer's conduct and demand was unreasonable and the employer knew, or should have known, it was both unreasonable and detrimental to Ms. Wasko. The final incident followed a similar incident three weeks earlier, when the employer scheduled Ms. Wasko for 16-hour double-shifts on consecutive days. The employer forced Ms. Wasko to choose between working an unreasonable and detrimental work schedule or losing work hours and income. The employer's conduct would have prompted a reasonable person to leave the employment.

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

DECISION:

The Agency representative's March 5, 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

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