IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ANN SERTLE Claimant **WOODWARD PRINTING** Employer	**APPEAL 21A-UI-09779-AR-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/24/20** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On April 7, 2021, claimant, Ann Sertle, filed an appeal from the April 2, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that claimant quit her employment with the employer, Woodward Printing, without showing good cause for having done so. The parties were properly notified about the hearing held by telephone on June 18, 2021. The claimant participated personally. The employer participated through its hearing representative, HR Coordinator Ali Chapman, with Heather Majerus as employer's witness.

ISSUE:

Did the claimant quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a bindery operator beginning on January 19, 2021, and was separated from employment on March 4, 2021, when she resigned.

At hire, claimant and her supervisor, Majerus, discussed that claimant would be asked to work a Saturday night shift on occasion. Claimant expressed that she did not want to work on Saturday nights. Majerus told her that she probably would not be forced to do so. The employer was printing a new daily publication that requires Saturday night shifts in order to put out the Sunday edition. Each week, Majerus asked for volunteers for that shift, which was approximately three hours beginning at 9:00 p.m. on Saturday night. However, if she did not get enough volunteers, she would need to supplement by staffing with people who had not volunteered to work the shift. There was no formal rotation schedule for people to work the Saturday night shift. People who worked the Saturday night shift were paid overtime.

On approximately March 1, 2021, Majerus approached claimant and told her that she likely needed to work the upcoming Saturday shift. When claimant told Majerus she did not want to, Majerus told her it was unfair for everyone else to be forced into Saturday night shifts, while claimant avoided them entirely. At that time, Majerus had not settled on who would staff the

upcoming Saturday's shift. Claimant had been considering resigning, but this conversation and the upcoming Saturday shift caused her to decide to resign. On March 4, 2021, Majerus noticed that claimant was acting upset. She called claimant into the office to ask if something was wrong. Claimant told Majerus she had accepted another job, did not wish to work Saturday evening, and that she resigned. Majerus allowed claimant to go home.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment without good cause attributable to the employer.

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 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.

The 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). 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).

Changes in the contract of hire can constitute good cause attributable to the employer for a claimant's leaving. However, that change in the contract of hire must be substantial in nature. 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 recently 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).

An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, No. 84-1913, 388 N.W.2d 677 (Iowa Ct. App. Jan. 29, 1986) (unpublished). The change to the terms of hire must be substantial in order to allow benefits. In this case, claimant has not established that infrequent, three-hour Saturday evening shifts constitute a substantial change in the agreements made at the time of her hire, particularly since she was notified at the time of hire of the potential for the shift to be assigned. Her daily shift and job duties were unaffected. She had not been asked to work a Saturday evening for nearly three months, and likely would not have been made to work many Saturday evenings. Majerus indicated that she sometimes has enough volunteers to staff the shift. Furthermore, claimant has not articulated a reason for refusing to work Saturday nights, other than simply not wanting to. Claimant has not met the burden of proof to show she quit with good cause attributable to the employer.

DECISION:

The April 2, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Alexis D. Rowe
Administrative Law Judge

June 30, 2021
Decision Dated and Mailed

ar/kmj