

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY E MAYO
Claimant

APPEAL NO. 15A-UI-02791-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MICHAELS STORES INC
Employer

OC: 02/08/15
Claimant: Respondent (1)

Iowa Code Section 96.5(1) - Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 20, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant voluntarily quit on January 19, 2015 due to a change the contract to hire. After due notice was issued, a hearing was held on April 8, 2015. Claimant Kelly Mayo did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Chuck Snyder represented the employer and presented additional testimony through Alice Noble and Bev Witmer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Department Exhibits D-1 and D-2 into evidence.

ISSUES:

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

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: the claimant commenced her part-time employment with the employer in 2013 and worked as a floral designer until January 19, 2015, when she voluntarily quit in response to changes in the conditions of her employment. The claimant worked on average 25 hours per week. The claimant had a background and degree in design. Toward the end of the claimant's employment, the employer made a business decision to stock more premade floral arrangements. The employer notified the claimant that she would thereafter be required to perform 15 hours per week of shelf straightening, rather than the five hours per week of shelf straightening she had previously performed. There would be a corresponding decrease in the amount of time claimant would spend on actual floral arrangement. The claimant's wage would not change. The claimant walked down the middle of her shift on January 19, 2015 and did not return.

Ms. Mayo established a claim for unemployment insurance benefits that was effective February 8, 2015 and received \$2,394.00 in benefits for the nine-week period between February 8, 2015 and April 11, 2015. And received an additional \$266.00 in benefits for the week ending May 16, 2015. The total amount of benefits paid claimant so far \$2,660.00.

On February 19, 2015, a Workforce Development claims deputy held a fact-finding interview to address the claimant's separation from the employment. The claimant participated. The claimant provided a statement that did not include any fraud or intentional misrepresentation. Though the claims deputy's notes indicate that the employer declined to participate in a fact-finding interview, Alice Noble, an employee of Equifax did speak with the claims deputy at the time of the fact-finding interview. Ms. Noble told the claims deputy that the claimant had quit due to dissatisfaction with the employment. Ms. Noble provided the first and last date of employment. Ms. Noble had no further information concerning the claimant's employment. On February 23, 2015, the employer submitted a timely protest in response to the notice of claim and included a statement regarding the separation in the protest materials.

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.

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).

The evidence in the record indicates that the employer fundamentally changed the nature of the employment from a floral designer position with a small amount of associated shelf straightening to a store clerk position with a much smaller amount of time spent on floral designing. Given the claimant's background, including the claimant's academic credentials, the employer's proposed changes to the conditions of employment were indeed substantial and providing good cause for the claimant to quit the employment.

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

DECISION:

The February 20, 2015, 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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