

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TONISHA R MITCHELL
Claimant

APPEAL NO. 21A-UI-14571-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARING HANDS & MORE LLC
Employer

**OC: 01/10/21
Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Tonisha Mitchell, filed a timely appeal from the June 21, 2021, reference 02, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit the employment on February 26, 2021 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 20, 2021. The claimant participated. Rodney Anderson represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-14572-JT-T. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBIN, DBRO, KCCO, WAGE-A, and the reference 01 and 02 decisions.

ISSUE:

Whether the claimant was laid off, voluntarily quit without good cause attributable to the employer, or was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Tonisha Mitchell, began her employment with Care Hands & More, L.L.C. in 2017 and last performed work for the employer in February 2020. The claimant worked as a full-time Direct Support Professional. The claimant usually worked the overnight shift. The hours on the overnight shift were 11:00 p.m. to 7:00 a.m. During most of the employment, the claimant was scheduled for four shifts per week and picked up one or more additional shifts. The claimant performed almost all of her work for the employer at the employer's Birch Kirkwood facility, located on the east side of Iowa City. The claimant's home was located on the east side of Iowa City. The claimant relied on another person for transportation to and from work. The employer temporarily closed the Birch Kirkwood facility in January 2020 and the facility remained closed for two months. Neither the employer nor the claimant is able to provide the last day the claimant performed work at the Birch Kirkwood facility or of the effective date of the closure.

While the employer asserts the employer sent an email notice to the claimant and to other staff regarding closure of the Birch Kirkwood residence, the claimant asserts she did not receive

such notice. The claimant attempted to report for work at the Birch Kirkwood residence three times only to find the residence dark and closed. The claimant then called the onsite manager of a residence the employer operated two doors down from the Birch Kirkwood residence. The onsite manager told the claimant that if the claimant continued to report to the empty house, the claimant would not be paid. The claimant then spoke with Director Rodney Anderson, who told the claimant that residents at the Birch Kirkwood residence had been discharged from that facility, but that the employer had another house where the employer could provide work for the claimant. The employer did not immediately follow up with the claimant regarding where and when the employer would have additional work.

In response to the lack of work at the Birch Kirkwood location, and in the absence of further information from the employer regarding additional work, the claimant gave a two-week quit notice on or about February 12, 2020. The claimant provided February 26, 2020 as her last day in the employment.

During the two-week notice period, the employer assigned the claimant to work at a residence located on 22nd Avenue in Coralville. The change in assignment substantially increased the commuting distance from the claimant's home to the workplace. At some earlier point in the employment, the claimant had worked shifts at a residence located on 12th Street in Coralville. The claimant worked three days at the 22nd Avenue residence. The client at the 22nd Avenue residence used a CPAP breathing device to address sleep apnea. The employer describes the CPAP device as a simple device with a couple of on-off switches and a place to put water. While the employer asserts the claimant received appropriate training to set up and use the CPAP device, the claimant asserts she did not receive training in how to use the CPAP and was uncomfortable with using the device. The claimant called an on-call supervisor for assistance and that person attempted to assist the claimant over the phone. The on-call supervisor told the claimant to call the office the next morning. When the claimant contacted the office, a representative told the claimant there would be no additional training in using the CPAP. The claimant then stopped appearing for shifts and separated from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 establishes a voluntary quit with good cause attributable to the employer, based on a substantial change in the conditions of the employment. The substantial changes included discontinuation of work at the Birch Kirkwood facility, substantially increased commuting distance relative to the claimant's usual workplace, the need to master safe use of the CPAP, and the denial of requested additional training. While the employer may have viewed the CPAP as a simple device to master and use, that did not mean the claimant would find the device simple to master and safety used. Based on the quit, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The June 21, 2021, reference 02, decision is reversed. The claimant voluntarily quit the employment effective February 26, 2020 with 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

November 17, 2021
Decision Dated and Mailed

jet/kmj