

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANITA L SALMERON
Claimant

HOPE HAVEN INC
Employer

APPEAL 20A-UI-10773-HP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/17/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant Anita Salmeron filed an appeal from an August 28, 2020 (reference 02) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer, Hope Haven Inc. (“Hope Haven”). The parties were properly notified of the hearing. A telephone hearing was held on October 21, 2020. Salmeron appeared and testified. Dawn Ramirez testified on behalf of Salmeron. Connie Pagel appeared and testified on behalf of Hope Haven. Exhibits A through C were admitted into the record. I also took administrative notice of Salmeron’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

On October 26, 2018, Salmeron commenced part-time employment with Hope Haven. Hope Haven operates facilities for individuals with disabilities. On May 12, 2019, Salmeron moved to on-call status with Hope Haven. On-call status employees must work at least 24 hours each month, and 14 of the 24 hours must be during the weekend. Katee Dean was Salmeron’s immediate supervisor at the end of her employment. Pagel works in human resources and provided Salmeron with her initial training on employment policies for Hope Haven.

In May 2020, Salmeron submitted a resignation letter to Dean, providing a three-week notice, as follows:

I Anita Salmeron have enjoyed working for Hope Haven I have loved watching the kids learn, grow, advance and reach milestones and become more independent. I would like to thank you for the opportunity, however, due to the recent change in schedule I feel like I am being forced to resign as I feel everyones [sic] time and

ONLINE RESOURCES:

effort is not being taken into consideration. Unfortunately with great sadness my last day will be June 1, 2020.

(Ex. A)

In her appeal, Salmeron reported she resigned due to a schedule change and because she was being harassed. Salmeron noted she worked 6:00 a.m. until 2:00 p.m. Hope Haven adjusted Salmeron's hours to 9:00 a.m. until 9:00 p.m. for June 2020. Salmeron reported she could not work the adjusted hours and she could only work during the day.

Salmeron did not rescind her resignation before June 1, 2020. Pagel testified continuing work was available to Salmeron had she not resigned and she was not in danger of being terminated or subject to layoff.

Salmeron testified Cynthia Chicas, an employee working at the intermediate care facility Hope Haven operates, was rude to her and harassed her. Chicas is an intellectual disability lead at the intermediate care facility. Salmeron testified two days before she left, one of the individuals with disabilities threw an egg at Salmeron and she did not see it. Chicas told Salmeron she left the egg for her to pick up. Salmeron reported Chicas ignored her, would not talk to her, and she would make disparaging remarks to her and tell her she was acting like a child. Salmeron testified Chicas did not direct any vulgar or profane words toward her; she was just hostile. Salmeron relayed Chicas did not make any statements she considered to be discriminatory on the basis of race, sex, religion, age, or any other protected class. Salmeron testified she complained to Dean about Chicas three times before she resigned and Dean told her she would take care of it, but she did not.

Ramirez is a former employee of Hope Haven. Hope Haven terminated Ramirez's employment on July 7, 2020. Ramirez worked with Salmeron at Hope Haven. Ramirez testified Chicas was also rude to Salmeron and other employees. Ramirez testified the employees complained to Dean about Chicas and Dean would say she would take care of it and that no one was perfect. Ramirez relayed nothing was done regarding Chicas' behavior.

Pagel testified employees had complained about Chicas' demeanor in the past. Pagel reported Salmeron never complained to her about Chicas and that her personnel file did not contain any information that Salmeron had complained about Chicas.

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: . . . If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "voluntary quit" means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "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).

871 Iowa Administrative Code 24.25(21) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. . . .The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(21) The claimant left because of dissatisfaction with the work environment.

871 Iowa Administrative Code 24.26(1) and (4), also provide:

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:

24.26(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.

24.26(4) The claimant left due to intolerable or detrimental working conditions.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Serv.*, 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. Emp't Appeal Bd.*, 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. Emp't Appeal Bd.*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

I do not find the change in Salmeron's work hours constituted a substantial change in her hours that establishes she quit with good cause attributable to Hope Haven. I do find that she worked with a hostile coworker, Chicas. Pagel noted Hope Haven had received complaints about Chicas' demeanor from employees, but she had not received any complaints specifically from Salmeron. Salmeron testified she complained to her supervisor, Dean, several times that Chicas was harassing her and mistreating her at work and Dean told her she would take care of it, but nothing changed. Ramirez did not listen to the testimony from Salmeron or Pagel before she testified. Ramirez reported Chicas was very rude to Salmeron and that many employees had complained about her to Dean. Chicas was a lead worker where Salmeron worked. I find Dean failed to properly address Salmeron's complaints about Chicas before she resigned. I find Salmeron's working environment to be detrimental and intolerable where a reasonable person would feel compelled to quit. Benefits are allowed, provided Salmeron is otherwise eligible.

DECISION:

The August 28, 2020 (reference 02) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
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October 23, 2020
Decision Dated and Mailed

hlp/sam