

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BAMBI E BENNETT
Claimant

APPEAL NO. 10A-UI-08598-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOTT IT! LC
QUIZNOS 11790
Employer

OC: 05/23/10
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Bambi Bennett filed a timely appeal from the June 14, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 3, 2010. Ms. Bennett participated. Nate Gottschalk, owner/manager, represented the employer and presented additional testimony through Debbie Gentry, Second Assistant Manager. Exhibits One and Two were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Bambi Bennett was employed by Gott it! L.C., doing business as Quiznos, as a part-time shift manager from September 2008 until May 24, 2010, when she voluntarily quit because she did not want to work a 4:00 p.m.-to-9:00 p.m. shift on Friday, May 28, 2010. Ms. Bennett usually worked 8:30 a.m. to 1:30 p.m. on Fridays and then returned to work 5:00 p.m. to 7:00 p.m. as a delivery driver on Friday evenings. The employer scheduled Ms. Bennett to work until 9:00 p.m. on May 28, 2010, to allow another employee to have the evening off. The other employee had been filling in for Ms. Bennett for a number of shifts she had needed off.

On May 24, 2010, Mr. Bennett approached Nate Gottschalk, owner/manager, and told him she had "a real fucking problem" working for the other employee and would not appear for the shift. Mr. Gottschalk told Ms. Bennett that she either needed to appear for the shift or find someone else to cover it. Ms. Bennett was upset and continued to tell Mr. Gottschalk that she did not want to work for the other employee. Mr. Gottschalk told Ms. Bennett that he thought the shift would work well for her because she would not have to come in and work her usual morning hours. Ms. Bennett ended the conversation by telling Mr. Gottschalk, "Take this job and shove it." Ms. Bennett then walked to the front of the restaurant. Ms. Bennett said, "Take your fucking keys, I quit." Ms. Bennett then left the workplace.

This employer was Ms. Bennett's only base period employer.

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.

871 IAC 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).

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 in the record fails to establish a significant change in the conditions of the employment. Working a couple hours longer on a single Friday night would not constitute a significant change in the conditions of the employment.

The weight of the evidence also fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment.

Ms. Bennett's lack of emotional control during the hearing, and on her last day of the employment, calls into question the credibility and reliability of her assertions that the employer made patently offensive remarks to her on her last day. Where Ms. Bennett's testimony conflicted with the employer's testimony, the administrative law judge finds the employer's testimony to be more credible.

The weight of the evidence indicates that Ms. Bennett voluntarily quit for personal reasons and not for good cause attributable to the employer. The employer's account will not be charged. Ms. Bennett is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

DECISION:

The Agency representative's June 14, 2010, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw