

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CANDIDA H HEATON**  
Claimant

**APPEAL NO. 16A-UI-04501-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KD HONGO LLC**  
Employer

**OC: 03/13/16**  
**Claimant: Respondent (5)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 6, 2016, reference 06, 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 a conclusion that the claimant had been discharged on March 7, 2016 for no disqualifying reason. After due notice was issued, a hearing was held on May 2, 2016. Claimant Candida Heaton participated. Andrew Knudsen represented the employer and presented additional testimony through Mike Bries and Eric Zuppko. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits Two, Three, Four, Five, Eight, A through H, and K into evidence. Department Exhibit D-1 was received into the record.

**ISSUE:**

Whether Ms. Heaton separated from the employment for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Andrew Knudsen owns and operates Mellow Mushroom, a restaurant located at the Coral Ridge Mall in Coralville. Candida Heaton started her employment at Mellow Mushroom in March 2015, as a part-time server. The restaurant was newly opened and underwent growth, including growth in staff, during Ms. Heaton's employment. In July 2015, Mr. Knudson promoted Ms. Heaton to the full-time salaried position of Front of House Manager. The salary was \$37,500.00 per annum. The Front of House Manager duties included supervising other staff. In December 2015, Mr. Knudson hired Mike Bries to be the restaurant's General Manager. Mr. Bries was new to the company at that time. In early 2016, Ms. Heaton expressed dissatisfaction with what she perceived to be Mr. Knudsen's favoritism directed at a particular food server. Ms. Heaton was also under stress due to her multiple work duties, changes in her family situation, and her involvement as a witness and first responder a homicide at Coral Ridge Mall. On January 6, 2016, Ms. Heaton told Mr. Bries that she was giving her 30-day notice. Ms. Heaton later rescinded the notice. The employer wanted Ms. Heaton to continue in the employment and acquiesced in rescission of the verbal quit notice. In February 2016,

Ms. Heaton again provided a 30-day verbal quit notice. On February 27, 2016, Ms. Heaton rescinded the quit notice and the employer again acquiesced in rescission of the quit notice. However, the employer became concerned that a third quit notice might result in an actual quit and the employer decided to remove Ms. Heaton from the Front of House Manager position.

During the first week of March 2016, Ms. Heaton heard a rumor that the employer was in the process of hiring a new Front of House Manager. The rumor was true. On March 4, the employer presented Ms. Heaton with a written job description for a newly created position of Lead Training Manager/Hospitality Specialist position. The employer expected Ms. Heaton to move into the new position effective March 7, 2016. While the new position would include the word manager in the title, Ms. Heaton would no longer supervise other employees and would not actually be a manager. When Ms. Heaton was not working as a server, she would assist other managers with training new employees and with employee evaluations. The change would move Ms. Heaton from her salaried position to an hourly pay structure wherein her compensation would be based in part on customer tips. The employer assured Ms. Heaton that the employer would make up any decrease in net pay so that new net pay equaled the net pay Ms. Heaton has received as the Front of House Manager. Though Ms. Heaton correctly perceived the change as a demotion, the employer attempted to assure Ms. Heaton it was not a demotion. Ms. Heaton correctly perceived her choice to be between accepting the new position and leaving the employment. Ms. Heaton subsequently signed and returned to the new job description but did not return to work any shifts. Ms. Heaton subsequently failed to respond to a text message from the employer inviting her to a meeting. In addition, Ms. Heaton traveled out of state.

#### **REASONING AND CONCLUSIONS OF LAW:**

The weight of the evidence in the record establishes that Ms. Heaton voluntarily quit in response to changes in the conditions of the employment.

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.

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 weight of the evidence indicates that any quit notice in place prior to February 27, 2016 had been rescinded as of that date and that employer had acquiesced in rescission of the quit notice. The weight of the evidence establishes that the employer thereafter decided to replace Ms. Heaton as Front of House Manager and decided to demote Ms. Heaton as part of that process. The employer imposed substantially changed conditions that would leave Ms. Heaton a manager in name only but that would effectively remove her from her management position. In addition to the demotion in title and duties, the demotion would result in loss of the salaried position. The employer’s proposal to make up any difference in the net pay was an illusory promise. In other words, there was no means by which Ms. Heaton could enforce that promise. The employer expected her to take the employer’s word that the pay would not change, when the pay structure clearly was changing and the employer was removing her from the Front of House Manager position. In the process of the unfolding change in conditions of employment, Ms. Heaton did indeed act in a manner that indicated she was electing to sever the employment relationship, rather than acquiesce in the changes.

The evidence in the record establishes a quit for good cause attributable to the employer, based on substantial changes in the conditions of the employment. Accordingly, Ms. Heaton is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits.

**DECISION:**

The April 6, 2016, reference 06, decision is modified as follows. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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