**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH J CUNNINGHAM**
Claimant

**CARE INITIATIVES**
Employer

**APPEAL NO. 11A-UI-10579-JTT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 07/10/11**
**Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 5, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 2, 2011. Claimant Elizabeth Cunningham participated. David Williams of TALX represented the employer and presented testimony through Scott Tangeman and Shawn Mikles.

**ISSUE:**

Whether Ms. Cunningham'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: Elizabeth Cunningham was employed by Care Initiatives at Park Ridge Nursing and Rehab Center in Pleasant Hill from 2009 until June 4, 2011, when she voluntarily quit. Scott Tangeman, Dietary Services Manager, was Ms. Cunningham's immediate supervisor. Ms. Cunningham had started as a dietary aide. Soon thereafter, Ms. Cunningham participated in cook training and became a full-time cook. Ms. Cunningham worked 40 hours per week or close to that amount. Ms. Cunningham continued to work an occasional shift as a dietary aide. The cook position initially paid $10.00 per hour. In July 2010, Ms. Cunningham's hourly wage was increased to $10.30.

In October 2010, Mr. Tangeman demoted Ms. Cunningham. Instead of being a cook, Ms. Cunningham would work primarily as a dietary aide and only occasionally be assigned to cooking duties. Other employees were promoted to cook duties to replace Ms. Cunningham. Mr. Tangeman reduced Ms. Cunningham's wage to $8.30 per hour. Her hours remained roughly the same. Mr. Tangeman made these changes after Ms. Cunningham was absent without providing a substitute worker seven times during a three-month period. Four or five of those absences had been based on Ms. Cunningham's need to care for a sick child. Ms. Cunningham is a single parent with three children. At the time of the demotion, Mr. Tangeman told Ms. Cunningham that when she got her life straightened out the two could discuss her return to the cooking duties.

In January 2011, when Ms. Cunningham had not been returned to the cooking duties, Ms. Cunningham submitted written notice that she would be leaving the employment effective May 30, 2011. Ms. Cunning had plans to enroll in a nursing program to provide a better life for herself and her family.

On March 22, 2011, Ms. Cunningham went on a leave of absence to give birth to her fourth child. During the week of April 13, Ms. Cunningham provided a release to return to work and Mr. Tangeman agreed to put her back on the schedule as a dietary aide at $8.30 per hour. Ms. Cunningham's hours quickly returned to the full-time or near full-time hours she had previously enjoyed. There was no further discussion about returning Ms. Cunningham to the cook position or returning to the higher wage from the time she started her leave. Ms. Cunningham continued to perform occasional cooking duties. Instead, both parties expected Ms. Cunningham would shortly begin her nursing studies.

Ms. Cunningham started her full-time nursing studies on May 9, 2011, when she participated in a two-week introductory course. For two weeks, Ms. Cunningham was only available to work evenings and weekends. Up to that point in the employment, Ms. Cunningham had been assigned to the day shift, 6:00 a.m. to 2:00 p.m. or 7:00 a.m. to 3:00 p.m.

On May 29, 2011, Ms. Cunningham began her regular nursing studies. Ms. Cunningham initially notified Mr. Tangeman that she was available to work Tuesdays, Thursdays, Saturdays and Sundays, but later indicated she was not available to work Thursdays. Ms. Cunningham wanted the employer to provide her with ten-hour shifts on those days when she was available to work. The employer was unable to accommodate this request. Ms. Cunningham worked four shifts after she started her regular nursing studies.

On June 4, Ms. Cunningham sent Mr. Tangeman a text message indicating that she was tired of being compared to another employee and would not be returning to the employment. Mr. Tangeman had not compared Ms. Cunningham to another employee. At the time Ms. Cunningham voluntarily quit, he employer continued to have work available to Ms. Cunningham on those days she had indicated she was available to work.

**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).

The changes in the conditions of the employer occurred in October 2010. Ms. Cunningham continued in the employment until June 2011 before she quit. Ms. Cunningham's decision to continue in the employment for that long a time amounted to acquiescence in the change in duties and reduction in wage. The evidence indicates that the separation actually occurred as a result of Ms. Cunningham's decision to go to school full time and the changes she made to her work availability. Ms. Cunningham changed the shifts she was available to work and substantially restricted her availability. The weight of the evidence establishes that Ms. Cunningham left the employment because it no longer worked for her in light of her full-time studies and the employer's inability to accommodate all of the changes she had made to availability.

When a worker voluntarily quits to attend school, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(26). When a worker quits due to dissatisfaction with the shift, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(18).

The weight of the evidence establishes that Ms. Cunningham voluntarily quit what had been full-time employment for personal reasons and without good cause attributable to the employer. Accordingly, Ms. Cunningham 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 for benefits paid to Ms. Cunningham.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the

Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representatives August 5, 2011, reference 01, decision is reversed. The claimant voluntarily quit the full-time 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.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

The remand should also address whether Ms. Cunningham has met the work availability requirement since she established her claim for unemployment insurance benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/css