

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOPSON, KELLY, S
Claimant

APPEAL NO. 13A-UI-06025-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HENRY COUNTY SOLDIERS AND SAILORS
Employer

OC: 04/14/13
Claimant: Respondent (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 14, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 27, 2013. Claimant Kelly Hopson provided a telephone number for the hearing but was not available at that number at the time of the hearing and did not participate. Maureen Ewinger represented the employer and presented additional testimony through James Carson and Jodi Gertz. Exhibits One and Two were received into evidence.

At approximately 10:02 a.m. on Friday, June 28, 2013, Ms. Hopson contacted the Appeals Section and spoke with the clerk who assists the administrative law judge with his hearings. Ms. Hopson told the clerk that she had been working at the time of the June 27 hearing, that she had thought the hearing was set for June 28, and that she had not heard the administrative law judge's message attempting to reach her for the hearing until late in the evening on June 27. The hearing notice that was mailed on May 23, 2013 had clearly stated that the hearing was set for Thursday, June 27, 2013 at 2:00 p.m. Ms. Hopson had received timely and appropriate notice of the hearing, as indicated by her response to the hearing notice on May 28, 2013, at which time she provided a telephone number for the hearing. The administrative law judge concludes that Ms. Hopson has not provided good cause to reopen the hearing record.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kelly Hopson was employed by Henry County Health Center as a part-time certified nursing assistant from 2010 and last performed work for the employer on April 13, 2013. During the last year of the employment, Ms. Hopson's work hours consisted of three shifts per week. On Saturdays and Sundays, Ms. Hopson would work from 6:45 a.m. to 7:15 p.m. On Thursdays, she would work from 1:00 p.m. to 9:00 p.m. That schedule provided Ms. Hopson with 32 hours per week, 64 hours per two-week pay period. Ms. Hopson was a nursing student at the time, was a licensed practical nurse, but worked for the employer as a CNA.

Toward the end of the employment, the employer restructured the way it scheduled nursing staff, including certified nursing assistants, to eliminate eight-hour shifts. Ultimately, the work hours the employer had for Ms. Hopson consisted of two 12-hour shifts every *third* weekend plus one additional 12-hour shift during the week. The shifts would start at 5:45 a.m. and end at 6:15 p.m. The change in the hours the employer had available for Ms. Hopson halved the work hours from 64 hours per two-week pay period to 32 hours per two-week pay period. The new schedule was to begin effective April 21, 2013. Ms. Hopson elected to separate from the employment rather than acquiesce in and appear for the reduced work schedule. Ms. Hopson did not appear for any additional shifts once the changed schedule went into effect. Ms. Hopson was about to complete her studies to become a registered nurse and decided to pursue other opportunities.

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 evidence in the record indicates that Ms. Hopson voluntarily quit in response to substantial changes to the established conditions of her employment. Ms. Hopson had worked the same schedule, 64 hours per two-week pay period for a year. The employer cut the available work hours in half and extended the mid-week shift from eight hours to twelve hours. The greatest change to the established conditions of employment was the 50 percent reduction in the number of work hours the employer had available for Ms. Hopson. That by itself was a substantial change in the condition of the employment that would make Ms. Hopson's voluntary quit for good cause attributable to the employer. The evidence indicates that Ms. Hopson promptly separated from the employment, rather than acquiesce in the changed conditions of employment.

Ms. Hopson voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Hopson is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Hopson.

DECISION:

The agency representative's May 14, 2013, reference 01, decision is affirmed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css