IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CONNIE M SEAMAN
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 07A-UI-10694-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/14/07 R: 01
Claimant: Respondent (1-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc., filed a timely appeal from the October 14, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was commenced on December 18, 2007, and concluded on December 20, 2007. Claimant Connie Seaman participated. Assistant Manager Christine Jarman represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, Two, and A through E into evidence.

ISSUES:

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

Whether the claimant's voluntary quit was prompted by a significant change in the conditions of employment.

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Connie Seaman was employed by Wal-Mart Stores, Inc., as a part-time sales associate from August 21, 2003 until October 10, 2007, when she voluntarily quit.

In August 2007, the employer changed its employee scheduling practices. The employer had determined that the employee staffing level in the area where Ms. Seaman was out of sync with the flow of customers at different points in the day. Assistant Manager Christine Jarman assumed responsibility for preparing the staffing schedule for Ms. Seaman's work area. Prior to the change in scheduling practices, a departmental supervisor had prepared the weekly work schedule. For the two years prior to the change in scheduling practices, Ms. Seaman had consistently worked 1:00 p.m. to 10:00 p.m. three days per week, 24 hours per week.

When Ms. Jarman began making the work schedule, she relied upon Ms. Seaman's most recent availability documentation. On March 20, 2006, Ms. Seaman had submitted a work availability

form that indicated she was available for work 7:00 a.m. to 10:00 p.m., Saturday through Thursday.

Ms. Seaman became aware of the change in the scheduling system while she was on vacation. Ms. Seaman had commenced her vacation on August 15 and returned to work on Sunday, August 26. While Ms. Seaman was still on vacation, Ms. Seaman stopped into the store to review her upcoming hours on the posted work schedule. The weekly work schedule is posted three weeks in advance. For scheduling purposes, the employer's workweek starts on Saturday and ends on Friday. Ms. Seaman was still on vacation during the first two days of the week of Saturday, August 25, through Friday, August 31. For that week, Ms. Seaman was scheduled to work Sunday, 8:00 a.m. to 2:00 p.m., and Monday, Wednesday, Thursday, 4:30-10:00 p.m. This amounted to 20.5 to 23 hours, depending on whether Ms. Seaman received a lunch break. Given Ms. Seaman's absence from the workplace for the first two days of workweek, the schedule did not reflect a change in the number of hours. However, the schedule did reflect a change in the number, length, and time of shifts. Ms. Seaman was upset that Ms. Jarman had scheduled her to work more than three shifts per week, had scheduled her to work a morning shift, and had shortened her shifts.

On or before August 21, Ms. Seaman provided Ms. Jarman with several notes indicating restrictions in her availability. Ms. Jarman advised Ms. Seaman that she had used the availability form Ms. Seaman had previously provided to the employer and that if Ms. Seaman wanted to change her availability, she would need to submit a new availability form. On August 21, Ms. Seaman submitted an availability form that said she was available three days per week, 1:00-10:00 p.m., 24 hours per week. The availability form indicated Ms. Seaman was not available to work Fridays. Because the work schedules are posted three weeks in advance, it would take three weeks for changes to appear in the posted schedule. However, Ms. Jarman was open to penciling in changes on the posted schedule.

The weekly schedules for September had already been posted. For the week of Saturday, September 1, through Friday, September 7, Ms. Seaman was scheduled to work Sunday, 4:15-10:00 p.m.; Monday, 4:30-9:00 p.m.; and Wednesday and Thursday, 7:00-11:30 a.m. This amounted to 18.75 to 19.25 hours, depending on whether Ms. Seaman received a lunch break during the Sunday shift. This schedule reflected a reduction in hours and length of shifts, an increase in the number of shifts, and a change in the time of the shifts. On August 27, Ms. Seaman asked Ms. Jarman to remove the Wednesday and Thursday, 7:00-11:30 a.m., shifts and Ms. Jarman removed those shifts.

For the week of Saturday, September 8, to Friday, September 14, Ms. Seaman was scheduled to work three days, 1:00-10:00 p.m. This schedule mirrored the schedule Ms. Seaman had enjoyed prior to the change in scheduling practices.

For the week of Saturday, September 15, to Friday, September 21, Ms. Seaman was not scheduled to work at all. However, Ms. Seaman had requested September 15, 16, 20, and 21 off, which significantly decreased her availability.

For the week of Saturday, September 22, to Friday, September 28, Ms. Seaman was scheduled to work three shifts, 11:00 a.m. to 8:00 p.m. This schedule mirrored the schedule Ms. Seaman had enjoyed prior the change in scheduling practices, except that the start time and stop time were each two hours earlier than the old 1:00-10:00 p.m. schedule.

For the week of Saturday, September 29, to Friday, October 5, Ms. Seaman was scheduled to work three days, 1:00-10:00 p.m. This schedule mirrored the schedule Ms. Seaman had enjoyed prior to the change in scheduling practices.

For the week of Saturday, October 6, through Friday, October 12, Ms. Seaman was scheduled to work Saturday, 5:00-10:00 p.m.; Sunday, 2:00-10:00 p.m.; and Thursday, 5:00-10:00 p.m. This amounted to 17 hours per week. This schedule reflected a seven-hour reduction compared to the schedule Ms. Seaman had enjoyed before the change in scheduling practices. Prior to posting this schedule, Ms. Jarman had discussed with Ms. Seaman the idea of changing her availability so that she was available until 11:00 p.m. Ms. Jarman told Ms. Seaman that if she were available until 11:00 p.m., Ms. Jarman could schedule her for 2:00-11:00 p.m. shifts. Ms. Jarman had told Ms. Seaman that if she was not available until 11:00 p.m., that her hours would be reduced. Ms. Seaman indicated that if she agreed to work until 11:00 p.m., she would only work until 11:00 p.m. two days per week.

On September 26, Ms. Seaman submitted her written resignation to the employer's personnel office. The noted stated as follows: "I am giving my two week notice since the position with my schedule no longer exists." Two weeks from September 26 was October 10. Ms. Seaman did not work any shifts after October 1. Instead, Ms. Seaman utilized accrued personal leave time during her last three scheduled shifts.

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. That said, the administrative law judge cannot consider Wal-Mart's reason or motivation for the change in scheduling practices. 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 greater weight of the evidence in the record does demonstrate a significant change in the conditions of employment. After two years in the three-day-per-week, 1:00-10:00 p.m. work schedule, that schedule became part of the established conditions of Ms. Seaman's employment. Ms. Seaman had a reasonable expectation that she would be allowed to continue working those hours. At first glance, the weekly schedules referenced above might seem to indicate that the employer was working to accommodate Ms. Seaman. In fact, the weekly schedules reflect significant variations in Ms. Seaman's scheduled work hours. The weekly schedules also reflect a discussion that concluded with the employer significantly reducing Ms. Seaman's hours on the October 6-12 schedule. That schedule was posted prior to Ms. Seaman giving notice of her quit and was the last straw that prompted the quit. The evidence indicates that Ms. Seaman at no time acquiesced in the changed conditions of her employment and that she promptly quit when it became clear she was at an impasse in her discussion with the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Seaman voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Seaman is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Seaman.

Iowa Code section 96.4-3 provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
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> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

> Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.
>
> (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required

> to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Though the separation issue was decided Ms. Seaman's favor, the evidence in the record raises the question of whether Ms. Seaman has been available for work since establishing her claim for benefits. That issue was not before the administrative law judge and will need to be addressed upon remand to a claims representative.

DECISION:

The Agency representatives October 14, 2007, reference 01, decision is affirmed. The claimant voluntarily 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. The matter is remanded for determination of the claimant's availability for work since establishing her claim for benefits.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

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