IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRITTNEY J GOERTZ
Claimant

STREAM INTERNATIONAL INC
Employer

APPEAL NO. 11A-UI-06319-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/10/11
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 2, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 22, 2011. Claimant Brittney Goertz participated. Monica Bloom-Ensminger represented the employer and presented additional testimony through Tracy Rosowski. Exhibits One, Two and Three were received into evidence.

ISSUE:

Whether Ms. Goertz'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: Brittney Goertz was employed by Stream International as a full-time Senior Service Professional until April 2, 2011, when she voluntarily quit the employment in connection with a proposed change in her work hours. Chris Tucker, Team Manager, was Ms. Goertz's immediate supervisor.

The employer would "shift bids" as business needs changed. Ms. Goertz would ordinarily receive advance notice of an upcoming shift bid and could carefully consider the available shifts and her bidding order, prior to making her choice of a new work schedule. Her bidding rank amongst supervisors was based on recent work performance.

During the final two months of the employment, Ms. Goertz had been assigned to work 8:00 a.m. to 7:00 p.m., Sunday through Wednesday. Prior to that, Ms. Goertz had worked a 1:00 p.m. to 10:00 p.m. shift.

The employer decided to do a shift bid for the supervisors on Thursday, March 31, 2011. This was Ms. Goertz's day off. On that day, Team Manager Tracy Rosowski, telephoned Ms. Goertz and told her about the supervisor shift-bid taking place that day. Ms. Rosowski had decided not to share with the Seniors their bidding rank, that is, who was allowed to bid for a shift before them, and who had to bid after them. At the time Ms. Rosowski contacted Ms. Goertz about the shift bid, she had also made Ms. Goertz aware of an available 7:00 a.m. to 4:00 p.m., Sunday

through Thursday shift. Ms. Rosowski had told Ms. Goertz that she could think about the proposed shifts and get back to Ms. Rosowski. Ms. Goertz selected a shift that ran from noon to 9:00 p.m. on all but one of her assigned work days. On the additional day, Ms. Goertz would work until 10:00 p.m.

After Ms. Goertz selected her new shift on Thursday, March 31, 2011, she spoke to her mother on April 1 and learned that the change in hours would present a child care problem. Ms. Goetz has three children: a four and six-year old, and an eight-month old baby. Ms. Goertz's mother was her primary child care provider. Ms. Goertz's mother also cared for Ms. Goertz's grandmother. Ms. Goertz's boyfriend worked for the same employer and was not available to care for the children. Ms. Goertz's mother told her she could not provide care during all the time when Ms. Goertz would need it under the proposed new schedule because it would cut into the time she needed to spend with Ms. Goertz's grandmother. Ms. Goertz concluded that the bid she had selected on short-notice on March 31, 2011 would not work with her child care needs and decided that she would leave the employment.

The proposed shift change was not the only thing that factored into Ms. Goertz's decision to leave the employment. Toward the end of the employment, Ms. Goertz had met with Human Resources Generalist Monica Bloom-Ensminger about what she perceived to be disparate treatment of Seniors. Ms. Goertz was upset that she had difficulty getting a proper lunch break and instead had to wait an extended period and continue to be available to assist the service professionals, while other Seniors did not seem to have such problems. When Ms. Goertz continued to express displeasure about perceived favoritism, Team Manages Tracy Rosowski and Linda Carr pulled Ms. Goertz into a meeting and told her to concern herself with her own affairs, not what was happening with other Seniors. When Ms. Goertz attempted to take her concerns higher, she was redirected back to the team managers. Ms. Goertz suspected that the circumstances of the March 31 shift-bid had something to do with her recent concerns about favoritism.

The new schedule was to go into effect on April 18. On April 2, Ms. Goertz telephoned the employer and left a message that she was quitting the employment.

On April 5, Ms. Goertz went to the workplace and spoke with a Human Resources representative, who told Ms. Goertz that she did not want Ms. Goertz to quit. Ms. Goertz spoke with the Site Director, who told her that if she wanted to keep the same hours she had had for the last two months, one option she had was to accept a demotion and do that. Ms. Goetz then spoke with Ms. Bloom-Ensminger and told her that the proposed change in hours would not work. Ms. Bloom-Ensminger told Ms. Goertz that the employer was willing to work with her as much as it was able and to let the employer know what she needed. Ms. Goertz was to get back to Ms. Bloom-Ensminger about that issue, but later contacted the employer only for the purpose of resigning from the employment.

REASONING AND CONCLUSIONS OF LAW:

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.

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. Goertz quit due to the change in proposed work hours, but also due to dissatisfaction with the work environment. When a person quits due to dissatisfaction with the work environment, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(22). The situation concerning the proposed change in hours is not the run-of-the-mill variety where it is easy to conclude there was a substantial change in the conditions of the employment. The shift bid process, and associated change in work hours, was a fairly regular occurrence during Ms. Goertz's employment. Ms. Goertz's work hours had been 8:00 a.m. to 7:00 p.m., Sunday through Thursday, for the last two months of the employment. But immediately prior to that, Ms. Goertz had worked the 1:00 p.m. to 10:00 p.m. shift for two months. This earlier work schedule was remarkably similar to the noon to 9:00 p.m. and noon to 10:00 p.m. shift the employer offered, and Ms. Goertz selected as part of the March 31, 2011 shift bid process. If Ms. Goertz did not like that schedule, the employer had a 7:00 a.m. to 4:00 p.m. schedule available for her. If that still did not work, Ms. Bloom-Ensminger and others made it clear to Ms. Goertz that the employer was willing to continue the discussion to find something that worked for both parties. Ms. Goertz elected to leave that discussion and separate from the employment instead. Under the circumstances, the administrative law judge cannot find a voluntary quit for good cause based on substantial changes in the conditions of the employment. What the evidence includes instead is a quit due to dissatisfaction with the work environment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Goertz voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Goertz 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. Goertz.

Iowa Code § 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 § 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 representative's May 2, 2011, reference 01, decision is reversed. 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.

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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs