

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNA J PEMBLE**  
Claimant

**APPEAL NO. 08A-UI-07551-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REGIS CORP**  
Employer

**OC: 02/10/08 R: 01  
Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Donna Pemble filed a timely appeal from the August 19, 2008, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on September 4, 2008. Ms. Pemble participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

**ISSUE:**

Whether Ms. Pemble'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: Donna Pemble was employed by Regis Corporation, doing business as SmartStyle, as a full-time manager of the SmartStyle salon located inside the Carroll Wal-Mart. Ms. Pemble started her employment on March 2, 2008, when the store first opened, and voluntarily quit on June 17, 2008. Two other full-time stylists started their employment at about the same Ms. Pemble started. One stylist quit on March 26, 2008, due to dissatisfaction with her wages. Another stylist went on a leave of absence, returned from the leave of absence on June 17 and announced the same day that she was quitting the employment. That stylist had previously indicated that she would be quitting unless the employer allowed her to go to part-time status. Ms. Pemble's immediate supervisor was District Manager Shelley Hanson. Ms. Hanson required that Ms. Pemble, as manager, cover for the other stylists when they could not work. During the last month of her employment, Ms. Pemble worked all hours the store was open: 9:00 a.m. to 9:00 p.m., Monday through Friday, 8:00 a.m. to 8:00 p.m. on Saturdays, and 10:00 a.m. to 6:00 p.m. on Sundays. Ms. Pemble was working approximately 80 hours per week without breaks. At the same time, Ms. Hanson expected Ms. Pemble to interview and hire new stylists to replace the stylist who had left and the one who had given notice of intent to quit if she could not go part-time. Ms. Hanson denied Ms. Pemble's request to place an ad in the newspaper. Ms. Hanson denied Ms. Pemble's request for assistance in the store so that she could have time to recruit new stylists or have a day off. Ms. Pemble interviewed several stylists, who declined a position at SmartStyle due to the wage offered.

On June 17, Ms. Pemble notified Ms. Hanson that she could no continue to work 80 hours per week. Ms. Pemble was experiencing the physical effects of working excessive hours. Ms. Pemble was unable to spend any significant amount of time with her family. Ms. Pemble was aware that the employer sometimes reduced the hours of operation in stores with just one stylist. Ms. Hanson denied Ms. Pemble's request to reduce the hours of operation. Ms. Pemble was aware that the employer sometimes had stylists from its other stores help out in understaffed salons. Ms. Hanson denied Ms. Pemble's request for such assistance. When Ms. Hanson told Ms. Pemble that she would have to continue to work under the same conditions or quit, Ms. Pemble notified Ms. Hanson that she was quitting. After Ms. Pemble quit, she learned that the employer reduced the hours of operation at the salon she had managed.

### **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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The administrative law judge notes that the employer elected not to participate in the appeal hearing. The administrative law judge further notes that the employer elected not to participate in the fact-finding interview. The employer's lack of participation lends further credence to Ms. Pemble's testimony about her working conditions.

The weight of the evidence in the record establishes both intolerable and detrimental working conditions that would have prompted a reasonable person to quit the employment. It was unreasonable for the employer to expect Ms. Pemble to work every day of the week for a month without a day off. It was unreasonable for the employer to expect Ms. Pemble to work 12-hour days without breaks. It was unreasonable for the employer to refuse to provide Ms. Pemble any assistance in operating the salon or recruiting new stylists. The weight of the evidence suggests that the employer fostered conditions that would prompt Ms. Pemble's resignation.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Pemble voluntarily quit the employment for good cause

attributable to the employer. Accordingly, Ms. Pemble is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Pemble.

**DECISION:**

The Agency representative's August 19, 2008, reference 03, decision is reversed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css