

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILY S LAWRENCE
Claimant

APPEAL NO. 15A-UI-02025-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HUGHES PHARMACY SERVICES INC
Employer

OC: 01/18/15
Claimant: Respondent (1/R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 2, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant's voluntary quit was for good cause attributable to the employer. After due notice was issued, a hearing was held on March 17, 2015. Claimant Emily Lawrence did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Steve Hoyman, owner, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit One into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

On March 24, 2015, one week after the hearing, Ms. Lawrence contacted the Appeals Bureau regarding the appeal hearing she had missed on March 17, 2015. Ms. Lawrence confirmed that she had received proper notice of the hearing date and time. Ms. Lawrence had taken partial steps toward registering a number for the hearing online, but had not completed the registration process and did not receive a confirmation number. Ms. Lawrence had then gone on vacation to Colorado on March 13 and had not returned to Iowa until March 21. Ms. Lawrence made no attempt on March 17 to participate in the hearing and did not follow up on the matter until a week later. The administrative law judge concluded that Ms. Lawrence did not provide good cause to reopen the hearing record.

ISSUES:

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

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Steve Hoyman owns and operates Hughes Pharmacy Services, Inc., and a separate movie theatre business. Emily Lawrence was employed by Mr. Hoyman as a part-time clerk in the pharmacy from October 2013 until December 21, 2014, when she voluntarily quit in response to her hours in the pharmacy being reduced.

Though Mr. Hoyman hired Ms. Lawrence to work as a part-time clerk in the pharmacy and to work also as a part-time concession worker in the movie theatre business, Ms. Lawrence never performed work for the movie theatre business. Her pharmacy clerk duties included cashiering and delivering prescription medications to customers. Ms. Lawrence was a full-time student. Her wage was \$7.50 per hour. At the beginning of the employment, Ms. Lawrence usually worked in the pharmacy from 3:00 p.m. to 5:30 p.m. two days per week. Ms. Lawrence's work hours later increased to three 2.5 hour shifts during the week. The employment also began to include some Saturdays from 9:00 a.m. to 4:00 p.m. and two-hour shifts on some Sundays. The employer knew that Ms. Lawrence was a full-time college student and accommodated the changes in her class schedule and work availability from semester to semester.

When Ms. Lawrence started classes in the fall of 2014, she did not have a class scheduled on Monday afternoons. Mr. Hoyman wanted Ms. Lawrence to work on Monday afternoons, but Ms. Lawrence declined to make herself available on Monday afternoons. Ms. Hoyman told the employer that she needed to go shoot her bow on Mondays. Mr. Hoyman continued to schedule Ms. Hoyman to work on other days, including on days when there was not much need for her help. In October 2014, Ms. Lawrence worked the three 2.5 hour shifts on Wednesday, Thursday and Friday and worked the weekend shifts on October 11-12 and 25-26. In November 2014, Ms. Lawrence for the most part worked the same schedule, though she requested the first Friday of the month off. She again worked two weekends. Though the employer wanted Ms. Lawrence to help out on November 23, 2014 because the employer was short-staffed that day, Ms. Lawrence did not appear for work that day. Until Mr. Hoyman reduced Ms. Lawrence's work hours in December 2014, Ms. Lawrence continued to work a schedule similar to the one she had enjoyed in the preceding months.

After Ms. Lawrence was absent from three pharmacy shifts without notifying Mr. Hoyman, Mr. Hoyman decided to cut her hours in the pharmacy back to the two 2.5 hour shifts per week, that work schedule was in place at the very start of the employment. The change was to be effective with the January 2015 work schedule. At the same time Mr. Hoyman reduced Ms. Lawrence's work hours in the pharmacy, he offered to provide her with work in the theatre. Mr. Hoyman directed Ms. Lawrence to contact the theatre manager about getting hours in the theatre working concessions. When Ms. Lawrence did not do that, Mr. Hoyman again directed her to contact the theatre manager about getting hours. When Mr. Hoyman spoke to Ms. Lawrence a third time about contacting the theatre manager, Ms. Lawrence advised that she would just quit the employment.

Ms. Lawrence established a claim for benefits that was effective January 18, 2015. Her weekly benefit amount was set at \$105.00. Ms. Lawrence has received \$945.00 in benefits for the nine-week period of January 18, 2015 through March 21, 2015.

The employer participated in the January 30, 2015 fact-finding interview through Steve Hoyman, owner.

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.

Iowa Admin. Code r. 871-24.26(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).

Mr. Hoyman elected not to discharge Ms. Lawrence in connection with missed pharmacy shifts. Accordingly, there is no need for the administrative law judge to determine whether there was a discharge based on misconduct in connection with the employment. See Iowa Code section 96.5(2)(a) and Iowa Administrative Code section 871-24.32(1)(a).

The weight of the evidence establishes a voluntary quit in response to substantial changes in the established conditions of the employment. Until the employer changed the conditions of the employment in December 2014, the established conditions of the employment included three 2.5 hour pharmacy shifts during the week and Saturday and Sunday pharmacy shifts, nine hours, two weekends per month. That work schedule included 24 hours every two weeks, averaging 12 hours per week, with an average weekly wage totaling \$90.00. When Mr. Hoyman cut Ms. Lawrence's pharmacy hours to five per week, the immediate effect was to reduce her wages to \$37.50 per week, a 58 percent reduction in weekly wages. Though the employer might have hired Ms. Lawrence with the intention of having her work also in the theatre, working in the theatre was not a condition of the employment for more than a year before Mr. Hoyman decided to make it a condition. The theatre concessions work was a different, arguably less desirable, type of work than the pharmacy clerking and prescription delivery work. The proposal that Ms. Lawrence recover lost pharmacy hours by working concessions at the theatre involved a second substantial change in the conditions of the employment. Pursuant to the rule in Dehmel, it is the impact on Ms. Lawrence that the administrative law judge is supposed to consider, not the employer's motivation in making the changes. Because the employer elected to change the established conditions of the employment, Ms. Lawrence's voluntary quit was indeed for good cause attributable to the employer. The employer's account may be charged for benefits. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

The information that Ms. Lawrence provided March 24, 2015, concerning her absence from the March 17, 2015 hearing included a statement that Ms. Lawrence was out-of-state on vacation from March 13 until late in the evening on March 21, 2014. That information strongly suggests that Ms. Lawrence was not available for work during the week that ended March 21, 2015. This matter will be remanded to the Benefits Bureau for determination of whether Ms. Lawrence had been available for work since she filed her claim for benefits.

DECISION:

The February 2, 2015, reference 01, decision is affirmed. The claimant quit the employment on December 21, 2014, 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/pjs