IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DEANNA J SLY
Claimant

LOVE'S TRAVEL STOPS AND
Employer

APPEAL NO. 10A-UI-13849-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/22/10
Claimant: Appellant (2)

Section 96.5(1) - Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 1, 2010, reference 01, decision that denied benefits in connection with a voluntary quit. After due notice was issued, a hearing was held on November 19, 2010. Claimant participated personally and was represented by Corey Walker, attorney at law. The employer did not provide a telephone number for the hearing in response to the hearing notice instructions and did not participate. The employer was aware of the hearing as indicated by a letter received from the employer on November 12, 2010. Exhibits A through E were received into evidence. The hearing in this matter was consolidated with the hearing an Appeal Number 10A-UI-13996-JTT.

ISSUE:

Whether the claimant voluntarily quit for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Deanna Sly was employed by Loves Travel Stops as a full-time cashier from February 15, 2010 until August 23, 2010, when she voluntarily quit. Ms. Sly's immediate supervisor was Charlie Fisher, manager. For most of the employment, Ms. Sly worked an overnight shift, from 11:00 p.m. to 7:00 a.m. or midnight to 8:00 a.m.

On April 4, 2010, Ms. Sly fell at work and suffered injury to her elbow, shoulder, and knee. Ms. Sly was off work until June 15, 2010, when she returned to work on reduced hours and with medical restrictions. Ms. Sly was restricted to working no more than four hours a day and restricted from stocking, cleaning showers, or lifting more than ten pounds. The restriction on the number of hours Ms. Sly could work gradually increased until August 11, 2010, when she was released to work a full eight-hour shift. The other restrictions remained in place until September 3, 2010, when the doctor provided Ms. Sly with a full medical release. Ms. Sly had provided all appropriate medical documentation to the employer.

Ms. Sly voluntarily quit on August 23 for two different reasons. Effective August 15 or 16, Mr. Fisher had decided to change Ms. Sly's work hours from the overnight shift to a

3:00 p.m.-to-11:00 p.m. evening shift. Ms. Sly is a single parent and, for that reason, could not work the evening shift. The employer moved another employee into Ms. Sly's overnight shift.

Though the change in shift was the last straw, this issue followed Mr. Fisher's refusal to refrain from assigning duties that exceeded Ms. Sly's medical restrictions. Despite the medical restrictions, Mr. Fisher assigned Ms. Sly to perform stocking duties, to lift 18-packs of beer and to lift 24-bottle cases of water. When Ms. Sly ultimately refused to perform the duties that exceeded her medical restrictions, Mr. Fisher moved Ms. Sly to the evening shift. In addition, Mr. Fisher began to openly mock Ms. Sly as she went about her assigned duties.

On August 20, 2010, Ms. Sly met with Mr. Fisher. At that time, Mr. Fisher indicated he would move her back to the overnight shift. When Ms. Sly appeared for work on August 23, Mr. Fisher told Ms. Sly that he was not in fact going to move her back to the overnight shift. Ms. Sly quit the employment at that point.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

> Separation because of illness, injury, or pregnancy.
>
> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.
>
> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work–related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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).

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 weight of the evidence in the record establishes that Ms. Sly voluntarily quit the employment in response to significant changes in the conditions of her employment. The significant change in question was the change in work hours from the overnight shift to the evening shift. This by itself constituted good cause for quitting the employment.

However, the evidence also establishes intolerable and detrimental working conditions. These included, primarily, the employer's insistence that Ms. Sly perform work that exceeded medical

restrictions imposed in connection with a work related injury, but also included the additional mild verbal abuse. The employer's insistence that Ms. Sly exceed her medical restrictions by itself constituted good cause to quit the employment.

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

DECISION:

The Agency representative's October 1, 2010, reference 01, decision is reversed. 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw