

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWNA B LAKE
Claimant

APPEAL NO. 16A-UI-09677-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HEALTH SERVICES – IOWA CORP
Employer

OC: 08/07/16
Claimant: Appellant (2)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Shawna Lake filed a timely appeal from the August 25, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Lake had voluntarily quit on August 8, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was started on September 21, 2016 and concluded on September 28, 2016. Ms. Lake appeared late for the September 21, 2016 proceeding, which prompted the reschedule to September 28, 2016. Ms. Lake participated in the September 28 proceeding. Dawn Bonham represented the employer on September 21 and 28. Ms. Bonham testified and presented additional testimony through Becky Wahlberg. Exhibit A was received into evidence.

ISSUE:

Whether Ms. Lake'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: Shawna Lake was employed by Mercy Health Services in Sioux City during two distinct periods. The most recent period of employment began in August 2014 and ended on August 8, 2016, when Ms. Lake voluntarily quit. Ms. Lake started the most recent period employment as a full-time Certified Surgical Technician in the employer's cardiac surgical unit. Ms. Lake remained a full-time employee until February 10, 2016. Ms. Lake commenced a maternity leave on November 14, 2015 and gave birth that same day. Ms. Lake returned from maternity leave on February 10, 2016. Prior to her return from maternity leave, Ms. Lake requested and the employer approved a temporary change to part-time status until November 2016. As a full-time employee, Ms. Lake had been assigned to work 6:00 a.m. to 2:30 p.m., Monday through Friday. As a full-time employee, Ms. Lake had also been obligated to be on call to assist with surgical emergencies two to three times per week. The on-call status would commence at the end of Ms. Lake's regular shift and continue until the start of her next shift. The employer paid Ms. Lake \$2.00 per hour for being on-call and paid her 1.5 times her regular wage if she was actually called in to assist with an emergency procedure. When Ms. Lake returned on part-time status, she was assigned to work 6:00 a.m. to 2:30 p.m., Monday, Wednesday, and Friday.

When Ms. Lake returned on part-time status, she requested to maintain full-time on-call responsibilities and the employer agreed to that. From the time Ms. Lake returned from maternity leave to her separation from the employment, Teresa Conlin, R.N., was her immediate supervisor. Throughout the most recent period of employment, Dawn Bonham was Manager of Clinical Services.

Ms. Lake elected to breast-feed her new infant. Once Ms. Lake returned to work in February 2016, she needed to periodically express/pump breast milk during her shift. While Ms. Lake and the employer did not discuss a specific schedule for Ms. Lake to use for breaks to express breast milk, Ms. Lake initially needed to express/pump breast every four hours and later needed to express breast milk every three hours. Ms. Lake was following the instructions of a lactation specialist to adhere to a strict schedule expressing breast milk while Ms. Lake was away from her baby. The employer arranged for a special lactation break room close to the surgical suite so that Ms. Lake could express milk with the least disruption of surgical center's operations.

As a Certified Surgical Technician, Ms. Lake was responsible for preparing the operating room for surgical procedures and assisting the surgeon during procedures. A nurse and a second Certified Surgical Technician would also be present to assist the surgeon during surgical procedures. Prior to May 16, 2016, Ms. Lake frequently worked with another Certified Surgical Technician, Jessica Riker, who was designated First Assistant.

Before Ms. Lake went on maternity leave, she was on medical restrictions in connection with her pregnancy. The medical restrictions indicated that Ms. Lake would need to take periodic rest breaks from her duties. When Ms. Lake asked the employer to enforce and comply with her need for this accommodation, Ms. Riker began to act in a manner that indicated Ms. Riker resented Ms. Lake's need for breaks.

When Ms. Lake returned after her maternity leave with a need to take breaks to express breast milk, Ms. Riker began to display open hostility toward Ms. Lake. Ms. Lake initially attempted to resolve the interpersonal tension on her own. In March 2016, Ms. Conlin told Ms. Lake about disturbing comments that Ms. Riker had made to Ms. Conlin about Ms. Lake. At that time, Ms. Conlin was Ms. Riker's immediate supervisor. Ms. Riker's comments included statement of resentment that Ms. Riker was paid for her lactation breaks, that it was "bullshit" that Ms. Lake needed to take so many breaks to express milk, and that Ms. Riker wished she knew how to shoot a gun so that she could use Ms. Lake's face for target practice. Ms. Lake requested a meeting to address Ms. Riker's comments and conduct. On March 29, the employer held a meeting in which Ms. Lake and Ms. Riker participated. The employer framed the meeting as a meeting to address bullying and harassment perpetrated by Ms. Riker. During the meeting, the employer directed Ms. Riker to immediately change her behavior as a condition of continuing in her employment.

Within a week or two of the March 29 meeting, the employer removed Ms. Riker from Ms. Conlin's supervisor and placed her under the ostensible supervision of Chad Brady, Interim Director of the heart center. The change in supervisor effectively put Ms. Riker under direct supervision of the clinic's only cardiac surgeon, Dr. Gurbuz. Subsequent to the change in supervisor, Ms. Riker's hostility toward Ms. Lake continued and escalated. On April 15, Ms. Lake asked Ms. Riker to train her on cardio bypass lines and Ms. Riker told Ms. Lake "No" without further explanation. On April 18, Ms. Lake learned that Ms. Riker had made additional disparaging remarks about Ms. Lake to other surgical support staff. On that same day, Ms. Riker snatched scissors out of Ms. Lake's hand while Ms. Lake was trying to provide guidance to another surgical tech. On April 20, Ms. Riker left the operating room while a patient was intubated and returned only when the surgeon entered the operating room. While Ms. Lake

believed Ms. Riker's departure to be a violation of the employer's policy, the anesthesiologist and/or anesthetist remained with the patient and Ms. Riker's departure did not violate the employer's policy. On April 20, Ms. Riker refused to tell Ms. Lake how to operate an orthopedic drill that needed to be used that day as part of a surgical procedure. Ms. Lake's lack of familiarity with the tool, and Ms. Riker's refusal to provide instruction, resulted in the procedure going less smoothly than it would otherwise have gone. On April 22, Ms. Lake learned from a nurse that Ms. Riker had that same day told an anesthesiologist that Ms. Lake was "stupid and incompetent."

Ms. Lake's working relationship with Ms. Riker reached a breaking point during the weekend of Saturday, May 14, through Sunday, May 15. On May 14, Ms. Lake was called in to assist with an emergency procedure that was unfamiliar to her. The case involved an aortic aneurism and the surgery would require that the patient's heart be surgically stopped during the procedure. Ms. Riker had also been called in to assist with the procedure. Ms. Lake had minutes to get ready for the lifesaving procedure. Ms. Lake asked Ms. Riker about the specific items she would need to collect for the procedure. Ms. Riker's response was to walk away. Ms. Lake believed that Ms. Riker's refusal to provide information placed the patient at risk and placed Ms. Lake's certification at risk. Ms. Lake notified Ms. Bonham that she was no longer going to accept on-call status when Ms. Riker was also scheduled to be on-call. Ms. Lake had also expressed concern to Ms. Bonham that she had been required to go several hours without a breast pumping break on May 14, 2016. Ms. Bonham looked at the schedule for the weekend in question and concluded that Ms. Lake had exaggerated the length of time she had to go without a breast pumping break.

In another incident close in time to May 14 incident, Ms. Lake was preparing for case when Ms. Riker intentionally walked into Ms. Lake's shoulder with her own shoulder while walking by. Ms. Lake reported to Ms. Bonham that Ms. Riker had "shoulder-bumped" her. A similar incident of aggression took place on June 15 during a procedure.

Though Ms. Lake remained available for on-call work when Ms. Riker was not scheduled, she did not work any additional on-call shifts with Ms. Riker. Ms. Lake filed a civil rights complaint based on Ms. Riker's conduct and named Ms. Riker as a party to the complaint. The employer continued to assign Ms. Lake and Ms. Riker to work together during regular working hours. On June 13, while Ms. Lake, Ms. Riker and the nurse were preparing the room for the procedure, the nurse left to grab saline solution. Ms. Riker followed the nurse out of the room. As Ms. Riker left the room, she announced that she was refusing to be alone in the room with Ms. Lake. On June 15, Ms. Riker forcefully bumped Ms. Lake during a surgical procedure. On June 20, while Ms. Lake, Ms. Riker and a nurse were assisting with a surgical procedure, Ms. Riker asked Ms. Lake to open an item for her. Ms. Lake needed to know the size of the particular item. Ms. Lake twice asked Ms. Riker for the size and Ms. Riker twice ignored the request for more information. Ms. Lake had to ask the nurse for the size needed for the procedure.

Ms. Lake's relationship with Dr. Gurbuz took a turn for the worse in connection with Ms. Lake's need for breast pumping breaks and in connection with Ms. Lake's refusal to take additional on-call shifts with Ms. Riker. In July, Dr. Gurbuz implemented a rule that once someone left the operating room during a procedure, he or she would not be allowed back in. Ms. Lake believed the rule was specific to her, but Dr. Gurbuz had implemented the rule in response to an increase in the infection rate of his patients. The rule primarily impacted Ms. Lake when she left the operating room to express breast milk. When Ms. Lake indicated she was no longer going to accept on-call duties with Ms. Riker, Dr. Gurbuz told Ms. Lake that she would be responsible if a patient died in connection with her refusal.

Ms. Lake's decision to quit the employment followed a meeting with Ms. Bonham and other surgical techs on August 8, 2016. Prior to that meeting, the employer had decided that the issues between Ms. Lake and Ms. Riker had been sufficiently addressed. The employer asserts both that the employer addressed Ms. Lake's concerns and that the employer, through another member of management not present for the appeal hearing, determined Ms. Lake's concerns to be unfounded. Ms. Bonham had called the meeting on August 8 to redistribute on-call shifts from two other surgical techs to Ms. Lake. Ms. Lake had six on-call shifts per month, only those shifts when a substitute first assistant was scheduled. The other two surgical techs had 15 and 16 on-call shifts per month. Ms. Bonham asked the other two surgical techs what on-call shifts they wanted to give to Ms. Lake. Ms. Lake stated that she would not pick up any on-call shifts wherein Ms. Riker was also scheduled to work. Ms. Bonham told Ms. Lake that the employer deemed it safe for Ms. Riker to move forward and that Ms. Lake would be subject to corrective action if she refused to pick up the shifts. Ms. Lake said she was not going to take the shifts and left the meeting.

Ms. Lake returned to meet with Ms. Bonham immediately following the group meeting and brought nurse Wendy Hanson, R.N., with her. Ms. Lake told Ms. Bonham that she was a horrible manager, did not care about patient safety, did not understand what Ms. Lake had gone through, and did not care. Ms. Bonham asserted that she had spoken to the highest members of management about Ms. Lake's situation, and that Ms. Lake's concerns had been deemed unfounded. Ms. Lake told Ms. Bonham that if the employer was going to write her up, she was going to quit. Ms. Lake then left the meeting in tears. Ms. Bonham conferred with another member of the management staff, April Leigh, who advised to get Ms. Lake's resignation in writing. Ms. Bonham communicated that expectation to Ms. Lake. The next day, Ms. Lake provided a written resignation by email to Ms. Bonham and three additional members of management. Ms. Lake's resignation letter addressed patient safety concerns and concerns that she was being harassed. Ms. Lake did not mention anything about break to express breast milk.

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.

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 establishes a voluntary quit for good cause attributable to the employer, based on intolerable and detrimental working conditions. The weight of the evidence establishes that Ms. Riker did indeed intentionally harass and intimidate Ms. Lake over the course of months, that Ms. Lake brought those concerns to the attention of the employer and that the employer initially found those concerns to be credible. Those initial concerns included explicit threats of violence. The weight of the evidence establishes that after Ms. Lake brought her initial concerns to the attention of the employer, and after Ms. Riker's employment was in jeopardy, other forces came into play and caused the employer to change course in addressing Ms. Lake's legitimate concerns about being threatened and harassed at work. The weight of the evidence suggests that the additional force was likely Dr. Gurbuz. Rather than continue to address Ms. Lake's concerns in a meaningful fashion, the employer took steps to insulate Ms. Riker from the consequences of her actions and, thereby, emboldened Ms. Riker to continue down the same path of harassment, intimidation and, at least on two occasions, overt physical aggression. The weight of the evidence establishes that Ms. Lake's legitimate concerns were not only about her own experience, but that many of the incidents involving Ms. Riker impacted patient care. The breaking point came for Ms. Lake when Ms. Riker acted in a manner that placed an emergency patient at increased risk. That May 14 episode understandably scared Ms. Lake. It was only after that experience that Ms. Lake refused to take additional on-call shifts wherein she would be at the mercy of Ms. Riker. Ms. Riker continued to engage in similar conduct that supported Ms. Lake's decision not to work on-call shifts with Ms. Riker. The weight of the evidence establishes that the employer never effectively addressed Ms. Lake's concerns. Instead, the employer focused on the on-call shifts Ms. Lake was no longer working and workload that situation had shifted to other surgical techs. The fact that Ms. Lake's legitimate concerns created an inconvenience to the employer does not make those concerns any less legitimate. The employer asserts on the one hand that the employer fully investigated Ms. Lake's concerns and, on the other hand, that Ms. Lake's concerns were unfounded. The employer asserts that another member of management, someone not present for the appeal hearing, investigated Ms. Lake's concerns and addressed them and/or determined they were unfounded. Ms. Lake's testimony concerning the matters that personally involved her was internally consistent. The weight of the evidence establishes intolerable and detrimental conditions that prompted Ms. Lake to refuse in May to take additional on-call shifts with Ms. Riker. The weight of the evidence establishes that Ms. Riker's conduct and, therefore, the intolerable and detrimental working conditions continued thereafter. The weight of the evidence indicates that Ms. Lake voluntarily quit the employment only after the employer notified her that she had to return to the intolerable and detrimental situation with Ms. Riker in connection by working additional on-call shifts with Ms. Riker.

Because Ms. Lake's voluntary quit was for good cause attributable to the employer, Ms. Lake is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The August 25, 2016, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs