

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSIE S KRIVOLAVY
Claimant

OKOBOJI BARZ INC
Employer

APPEAL 16A-UI-12110-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/16/16
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 3, 2016 (reference 01) unemployment insurance decision that held claimant ineligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 29, 2016. Claimant, Josie S. Krivolavy, participated personally. Employer, Okoboji Barz Inc., participated through Food and Beverage Manager Milissa Reynolds.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a seasonal full-time employee from May 27, 2016 and was separated from employment on July 25, 2016, when she voluntarily quit. Claimant's rate of pay per hour was \$5.50 plus tips. When claimant was hired she was working in the restaurant. She began her shift sometime between 8:00 a.m. and 10:00 a.m. at the restaurant. Claimant was typically off of work by 3:00 p.m. each day.

On June 9, 2016 claimant was transferred from the restaurant to the bar; which was at a different location. The bar hours were from 10:00 a.m. to between 3:00 p.m. and 6:00 p.m. She was aware when she first became employed with the company that her shift end time would vary depending on customer needs. She was transferred because she was failing to come to work on time at the restaurant and agreed to a later shift start time, which was available at the bar.

Claimant voluntarily quit her employment because she believed she was not making enough money and the fact that she needed to be able to watch her minor children when they returned from the summer with their father. Continuing work was available to the claimant if she had not voluntarily quit her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit her employment without good cause attributable to the employer. Benefits are denied.

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.

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.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions.

However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The change to the terms of hire must be substantial in order for the claimant to establish that her voluntary quit was with good cause attributable to the employer. In this case, the claimant has failed to establish that there was a substantial change in the contract of hire.

Claimant has failed to establish what percentage decrease, if any, there was between her employment at the restaurant and her employment at the bar. No documentation or testimony was presented regarding a reduction in tips received by working at the bar. Her hourly rate remained the same throughout the course of her employment. As such, claimant has failed to establish any change in the contract of hire, let alone a substantial change in the contract of hire, as it relates to her wages.

Further, claimant has failed to establish that the change in hours from the restaurant to the bar were substantial. Claimant was aware when she was hired that her hours would vary depending on customer need. Lastly, claimant agreed to the change from the restaurant to the bar at the beginning of June and has acquiesced to this change.

Thus, the separation was without good cause attributable to the employer. Benefits are denied.

DECISION:

The November 3, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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