IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CARLA K LANGFORD Claimant **YOUTH EMERGENCY SERVICES & SHELTER** Employer	**APPEAL 17A-UI-10216-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/10/17** **Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer participation at fact-finding interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the September 29, 2017 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment insurance benefits based upon her voluntarily quitting work because working conditions were detrimental to her. The parties were properly notified about the hearing. A telephone hearing was held on October 23, 2017. Claimant, Carla K. Langford, participated personally. Employer, Youth Emergency Services & Shelter, was represented by Angie Hackenmiller and participated through witnesses Brandi Fink and Katie Kamienski. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did claimant voluntarily quit her employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?
Is the claimant overpaid benefits?
Can the employer's account be relieved of charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as a kitchen supervisor. Brandi Fink was her supervisor. This employer houses and cares for youth in its shelter facility. Claimant began working for this employer on June 3, 1998 as a part-time cook. She eventually became the kitchen supervisor approximately eight years ago. As kitchen supervisor, she was in charge of supervising the part-time cook, supervising the full-time cook, ordering products, creating and planning meals, food preparation, serving, and cleaning among other job duties. Claimant was told when she took the kitchen supervisor position that her working hours were from 9:30 a.m. to 5:30 p.m. Monday through Friday each week. Claimant would only occasionally work on weekends if there was an event at the shelter.

On July 24, 2017, the full-time cook that claimant was supervising quit. At this time, there was not a part-time cook. Claimant took on the job duties of three employees that included cooking, serving, and cleaning for sometimes more than 80 people.

On a daily basis, claimant requested help covering the job duties of the part-time and full-time cooks. However, only on some occasions was claimant given help by another employee. This caused claimant to work past 5:30 p.m. on numerous occasions, including working until 8:00 p.m., and coming into work before her scheduled 9:30 a.m. start time in order to get all the job tasks completed. Claimant was told that she needed to complete all the job tasks on Fridays before she left work because there were no cooks on the weekends, just volunteers.

During this period claimant was on restricted duty due to a work-related injury. She was instructed to lift no more than ten pounds and refrain from overhead lifting. This work restriction was in place for approximately one week. During this time claimant still did not have any permanent help in the kitchen and was instructed to go find another employee if she needed to lift items. This caused her work to slow down and meant that she was unable to accomplish the job tasks of three employees during her normal scheduled hours.

After enduring almost two months of completing job duties for three separate employees, the claimant voluntarily quit. She tendered her verbal resignation to Ms. Fink on September 14, 2017. At the time claimant voluntarily quit, there were no potential employees set to be hired as part-time or full-time cooks to assist her in the kitchen.

Claimant received benefits of $2,082.00 for the six weeks between September 10, 2017 and October 21, 2017. Employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds that the claimant voluntarily quit with good cause attributable to the employer.

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, the claimant voluntarily quit her employment. As such, claimant must prove that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

The decision in this case rests, at least in part, upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of

witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that the claimant's version of events is more credible than that of the employer.

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 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. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to her quitting, however, she did provide notice to her supervisor on a daily basis.

It is reasonable to the average person that he or she should not have to complete the job tasks of three employees with no plan or insight as to when those increased job duties may cease. The administrative law judge is sympathetic to the employer in hiring employees who are the right fit for a job and the growing pains associated with the departure and hiring of new staff. However, claimant put the employer on notice on a daily basis that she needed additional permanent staff in the kitchen and her requests went unanswered. Claimant has proven that her working conditions were intolerable and detrimental.

Alternatively, claimant has also proven that there was a change in the contract of hire as kitchen supervisor when she was required to work past her working hours of 9:30 a.m. to 5:30 p.m. consistently every week. In proving a change in the contract of hire, claimant must establish that the change was substantial.

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). In this case, the claimant's change in working hours was substantial.

Thus, the separation was with good cause attributable to the employer. As such, benefits are allowed. Because benefits are allowed, the issues of overpayment and chargeability are moot.

DECISION:

The September 29, 2017 (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

db/rvs