IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ELIZABETH M ACKERMAN
Claimant

KESHAV CORPORATION
Employer

APPEAL NO. 12A-UI-01052-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/25/11
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Elizabeth Ackerman filed a timely appeal from the January 25, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 9, 2012. Ms. Ackerman participated personally and was represented by Attorney Derek Johnson. Mr. Johnson presented testimony through Ms. Ackerman and Kara Johnston. Rica Patel represented the employer. Exhibits One, Two, Six, Seven, Eight and A through E were received into evidence.

ISSUE:

Whether Ms. Ackerman separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operates the AmericInn motel in Burlington. Elizabeth Ackerman was employed by Keshav Corporation as the full-time general manager of the employer's Burlington motel from May 2011 until December 27, 2011, when she voluntarily quit in response to changes in the conditions of the employment. Ms. Ackerman's immediate supervisor was owner Rica Patel. Ms. Ackerman was the only salaried employee. Her salary was $900.00 to every two weeks.

In July 2011, after Ms. Ackerman had been in the employment for two months, Ms. Patel and Ms. Ackerman executed a written agreement regarding Ms. Ackerman's duties and work hours. Under the agreement, Ms. Ackerman was expected to work at the front desk at least 40 hours per week. Ms. Ackerman had many other additional duties that would take her away from the front desk or even out of the facility itself. Outside activities included necessary bank runs and marketing. The marking duties were included in the July written agreement. Ms. Ackerman did the bank run because the employer had moved to Coralville and might get to the motel every couple weeks.

Around Thanksgiving, the employer became upset because Ms. Ackerman took Thanksgiving and the following Friday off without coming into work the Saturday and Sunday. The employer

suspected that Ms. Ackerman was not putting in full-time hours, though her duties clearly had her at motel in excess of 40 hours per week on a regular basis. The employer used surveillance cameras throughout the motel and a high-tech system to monitor the motel from home and from a cell phone.

On the evening of December 26, Ms. Patel telephoned the motel and told the assistant manager to leave a note for Ms. Ackerman. Ms. Patel wanted Ms. Ackerman to start using the time clock to keep track of her hours. This was a change from the arrangement in place since Ms. Ackerman started the employment. Since the concern about work hours around Thanksgiving, Ms. Ackerman had been documenting her work hours on a desk calendar. All other employees were hourly employees who used the time clock to sign in and out. Ms. Ackerman learned of the employer's time clock directive later in the evening on December 26 and concluded that the employer essentially wanted to stop treating her as the manager. On December 27, when she arrived for work, Ms. Ackerman did not put on her manager's name tag and told those seeking the manager that there was not a manager on duty.

On December 27, Ms. Patel went to the Burlington motel. Ms. Patel took along the manager of one of the employer's other motels. Ms. Ackerman was not feeling well that day and had a doctor's appointment scheduled for 3:30 p.m. Ms. Patel arrived at the motel at 3:00 p.m. Ms. Patel told Ms. Ackerman that the employer was eliminating her salary and making her an hourly employee. Ms. Patel told Ms. Ackerman that she would be paid $10.00 per hour. The employer has an unequivocal policy prohibiting hourly employees from working overtime. The policy appeared on each and every work schedule in bold and capital letters followed by an exclamation point. Ms. Ackerman concluded she would be expected to perform the same amount of work in less time and be paid $50.00 less per week to do it. Ms. Patel said or did nothing to suggest otherwise. Ms. Ackerman asked to think about the proposed changes overnight before giving a response regarding whether she would agree to the changed conditions. Ms. Patel refused the request and demanded an answer there and then. In light of the employer's refusal to give her time to think about the proposed changes, Ms. Ackerman told Ms. Patel that she would not accept the changes and was immediately resigning from the employment.

On December 20, 2011, Ms. Ackerman had given the employer written notice that she would be leaving the employment at some point in the near future to relocate to Colorado. Ms. Ackerman had previously mentioned to the employer her plans to move. After that, Ms. Patel had insisted that Ms. Ackerman provide something in writing. In the written notice, Ms. Ackerman indicated she did not know when she would be leaving, presumed it would be at the beginning of February 2012, but added that she was not sure and that she would give the employer advance notice when she had a date certain for her separation from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

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).

The weight of the evidence establishes a voluntary quit in response to changes in the conditions of employment. Ms. Ackerman reasonably concluded that the employer was reducing her pay. Given the employer's policy concerning overtime, Ms. Ackerman reasonably concluded that the employer would limit her to 40 hours per week or something very close to that. Under the proposed change to hourly compensation, this would have meant an 11 percent reduction in pay. In light of the employer's unequivocal prohibition against paying overtime wages, Ms. Ackerman reasonably concluded that the employer would expect her to do the same amount of work in less time for less money. Ms. Ackerman reasonably concluded that the change to hourly status would mean a change in her previous status as manager. Whether that meant full removal from manager duties was yet to be seen.

The employer said a number of things during the hearing that undermined the employer's credibility. These included the assertion that Ms. Ackerman was not responsible for outside marketing or need not make bank runs. These included the assertion that the employer had no prohibition concerning overtime wages despite clear evidence to the contrary. The testimony from both sides that he employer had motel employees go clean her house while remaining on the clock at the motel indicates the employer was willing to bend or break the rules when it was in the employer's interests. The employer's sophisticated surveillance system and use of that system to micromanage the motel strongly suggested the employer had a low estimate of the skill or trustworthiness of employees. Several factors pertaining to the employment relationship indicate that the employer took undue advantage of Ms. Ackerman and that Ms. Ackerman correctly concluded the transition to hourly employment would be in keeping with that overreaching approach.

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

DECISION:

The Agency representative's January 25, 2012, 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

_____
Decision Dated and Mailed

jet/kjw