IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

ANGELA L PRUNTY
Claimant

APPEAL 16A-UI-09237-JCT

ADMINISTRATIVE LAW JUDGE DECISION

HOLIDAY AL MANAGEMENT SUB LLC
Employer

OC: 07/31/16
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 18, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on September 12, 2016. The claimant participated personally. The employer did not participate as it did not register a phone number with the Appeals Bureau. The employer's notice of hearing was returned to the Appeals Bureau as undeliverable. Claimant exhibits A, B, C and D were received into evidence.
Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an assistant general manager and was separated from employment on August 1, 2016, when she quit her employment.

The claimant has insomnia and has been treated by her physician for several years. Currently her treatment involves medication that allows her to sleep but also makes her excessively groggy during her sleep cycle. When the claimant was hired, she made the employer aware of her condition, because she and her co-manager, would be responsible for responding to any overnight emergency "on call" events that occurred to the residents who lived in independent housing units with the employer. The employer indicated the insomnia would not be an issue because there would be two managers to respond to any overnight on-call emergencies. The claimant and her co-manager shared an apartment and when an on-call emergency occurred, her co-manager would tend to the resident and assess their needs while the claimant would let in any emergency crew, since she was groggy and unable to safely assess medical needs.

The co-manager quit employment in May 2016, and the employer reported it would not be back-filling the position. Instead the claimant became solely responsible for working her day shifts (Claimant exhibit A) but then tending to all on-call emergencies that occurred overnight on Wednesdays, Thursdays, Fridays and Saturdays (Claimant exhibit A). When the employer's corporate contact made the claimant aware of the change, she reminded them that she had insomnia and could not tend to emergencies alone overnight due to her medication's side effects. She was advised to not take her medication when she had to work overnights, which meant she was going against her medical advice and spending four nights a week without full sleep. When the claimant raised concerns after trying to go without medications, her manager would make light of her concerns, joking that some nights he would only get a couple hours of sleep too. After trying to forgo her medication for several weeks, in order to handle the overnight on-call shifts alone, the claimant was advised by her doctor that she should not be working at nighttime with her medication, and voluntarily quit the employment.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(1) provides:

Causes for disqualification.
> 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:
> **24.26(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.

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 Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id. Assessing the

credibility of the witness and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant voluntarily quit the employment with good cause attributable to the employer, as defined by the Iowa unemployment insurance law.

Although the claimant was not required by law to give the employer notice of her intent to quit, the change to the terms of hire must be substantial in order to allow benefits. In this case, the employer hired the claimant to work on-call overnights, as part of a team, and with the claimant's disclosure that she could not perform overnight assignments alone due to her insomnia and treating medication. Then, the employer elected not to replace the claimant's co-manager who partnered with her to cover the overnight shift. When the claimant reminded the employer of her medical condition which prevented her from safely responding to overnight calls while under prescribed medication, she was advised not to take her medication. When the claimant reminded her manager that she was not sleeping because she could not take her medication and work her scheduled shifts, her manager made light of the situation by joking about his nights of minimal sleep. The administrative law judge does not find the employer's directive to be reasonable, after it changed the original terms of hire.

While the employer is certainly entitled to make personnel decisions based upon its needs, that need does not necessarily relieve it from potential liability for unemployment insurance benefit payments. Inasmuch as the employer hired the claimant to work as a team for overnight on-call shifts, and changed the structure for the claimant to work solo, forcing her to forgo her prescribed medication in order to complete her work shifts, the claimant established the employer caused a substantial change in the terms of hire. The claimant has met the burden of proof to show she quit with good cause attributable to the employer.

DECISION:

The August 18, 2016, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

jlb/pjs