IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CORY L MILLER Claimant **CENTRAL IOWA KFC INC** Employer	**APPEAL NO. 21A-UI-15726-JTT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/25/21** **Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Cory Miller, filed a timely appeal from the July 9, 2021, reference 01, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on April 23, 2021 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 2, 2021. Claimant participated personally and was represented by paralegal Jon Geyer. Attorney Melissa Schilling represented the employer and presented testimony through Marshall Brandt. Exhibits 1, 2 and 3 were received into evidence.

ISSUE:

Whether the claimant'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: The claimant began his employment with KFC of Central Iowa, Inc. in 1998 and last performed work for the employer on April 23, 2021. During the last 10 years of the employment, the claimant was the full-time, salaried Restaurant General Manager at the KFC on Southwest 9th Street in Des Moines. The employer has other KFC restaurants in Des Moines metropolitan area, Ankeny and Altoona. The claimant's pay consisted $1,964.00 per two-week pay period, plus "one-half time," about $12.27 and hours for hours that exceeded 40 per week. The claimant was expected to work 44 hours a week or more. The claimant's core hours included one open to close shift and additional shifts that would last from six to nine hours. The claimant would sometimes work a 55-hour week pursuant to business needs. The claimant had two assistant managers and ran the employer's highest volume store. The claimant was eligible for bonuses based on store performance and customer surveys. The claimant resided about a mile from his assignment restaurant. About six times a year the claimant would help at one of the employer's other restaurants. The other restaurants were 10 miles or more from the claimant's home. During the last four years of the employment, Marshall Brandt, Area Coach (district manager), was the claimant's immediate supervisor.

On March 21, 2021, the claimant handed Mr. Brand a written two-week notice that he last day in the employment would be April 4, 2021. The claimant was feeling overworked. When fully staffed, the restaurant would usually have six staff members on hand. When fully staffed, the restaurant might add one or two additional employees at busy times. The restaurant was operating under chronically understaffed circumstances in the context of substantially increased sales volume. Though the claimant was responsible for hiring new employees, the starting wage the employer was willing to offer new employees was not competitive and the claimant found it difficult to hire and retain workers. The claimant frequently found himself operating the restaurant with three people to do the work of six or more. Before the claimant submitted his quit notice, one of his assistant managers quit for similar reasons.

Though the claimant provided a quit notice with an April 4, 2021 effective quit date, the claimant ended up agreeing to stay on indefinitely and to provide a subsequent two-week quit notice if and when he decided to leave the employment. The claimant inquired about employment, but did not accept other employment.

In an attempt to persuade the claimant to continue with the employer, Mr. Brandt spoke to the claimant on April 21, 2021 and pitched the idea of the claimant becoming a "Floating Restaurant Manager," wherein the claimant would help at the employer's various restaurants at week at a time. The claimant was initially receptive to the idea. With that in mind, Mr. Brandt contacted the assistant manager who had quit and offered her the claimant's Restaurant General Manager (RGM) position. The former assistant manager accepted the RGM position. At about the same time, the employer boosted starting wages to $11.00 an hour to make them more competitive.

On April 23, 2021, Mr. Brandt reengaged the claimant in conversation about the "Floating Restaurant Manager," with a written agreement in hand. The agreement included an increase in pay to $2,044.00 per two-week pay period. The claimant was concerned with some of the provisions of the proposed agreement. Under the agreement, the claimant would still be expected to work at least 45 hours per week, but would no longer received the "half pay" for hours worked over 40 per week. The claimant was concerned about whether and under what circumstances he would qualify for bonus as a floating manager. The claimant was concerned that the employer expected him to regularly added a 20-mile round trip commute, but had made no provision for reimbursing the claimant for his gas expense or wear on his vehicle. The claimant told Mr. Brandt that loss of the "half pay" was non-negotiable. Mr. Brandt conferred with employer's home office and received the directive that the claimant either had to accept the agreement as written or had to separate from the employment. The claimant elected to separate from the employment and provided Mr. Brandt with his restaurant keys.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

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.

"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).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(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 in the record establishes a voluntary quit for good cause attributable to the employer. The claimant quit in response to substantial changes in the conditions of the employment. One of those changes was a fundamental change in the compensation structure whereby the claimant would no longer be compensated for the hours he worked that exceeded 40 per week, while at the same time being required to work at least 45 hours per week. Another substantial change was the addition of the substantial commuting time and expense, which the employer proposed to shift entirely onto the claimant. The claimant reasonably concluded that what upon initial discussion appeared to be an acceptable proposed was unreasonable and detrimental when spelled out in the agreement drafted by the employer.

Ironically, the quit in response to substantially changed circumstances came just as the employer was belatedly taking steps to meaningfully increase the starting wages for new employees, which in turn amounted to a meaningful step toward making what had been an intolerable and detrimental situation for the Restaurant General Manager more bearable. At the moment the employer made that change, the employer also barred the claimant from continuing in the RGM position he had held for 10 years.

The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 9, 2021, reference 01, decision is reversed. The claimant voluntarily quit the employment on April 23, 2021 with good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

September 13, 2021
Decision Dated and Mailed

jet/mh