IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BEVERLY M REYNOLDS
Claimant

HCI VNS CARE SERVICES
Employer

APPEAL NO. 15A-UI-09525-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/26/15
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 12, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had voluntarily quit on July 20, 2015 for good cause attributable to the employer. After due notice was issued, a hearing was held on September 9, 2015. Claimant Beverly Reynolds participated. Michele Hawkins of Equifax represented the employer and presented testimony through Ashley McNamee and Bev Erskin. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Four into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Beverly Reynolds, R.N., was employed by HCI VNS Care Services as a full-time hospice nurse from April 2015 until July 20, 2015, when she voluntarily quit the employment due to changes in the work conditions and perceived harassment. Ms. Reynolds immediate supervisor was Bev Erskin, Team Director. On June 10, Ms. Reynolds made an error when administering a medication to a hospice patient. On July 7, Ms. Erskin and a colleague met with Ms. Reynolds for the purpose of issuing a warning regarding the June 10 medication error and concerns about Ms. Reynolds interaction with the employer's chief medical officer. At the time of the July 7 meeting, Ms. Reynolds advised the employer that she had made an additional medication error on her July 6-7 overnight shift. On July 15, Ms. Erskin notified Ms. Reynolds that she would have to complete and pass a medication test before she would be allowed to return to her nursing duties. Throughout the employment, Ms. Reynolds' licensure as a registered nurse had

been good standing. Ms. Erskin told Ms. Reynolds that she would have to complete the test on Monday, July 20, 2015. Ms. Erskin told Ms. Reynolds that in the meantime, Ms. Reynolds would be demoted to certified nursing assistant duties. Ms. Reynolds declined to perform work for the employer as a nursing assistant. Ms. Reynolds perceived the proposed demotion to be demeaning to her. Ms. Reynolds elected to remain off work, rather than return to the workplace and perform nursing assistant duties. Ms. Reynolds expected to receive study materials from the employer regarding the medication test, but did not receive any such materials. On July 20, Ms. Reynolds notified the employer that she was quitting the employment, rather than submit to the changed conditions of the employment. On July 17, 2015, the employer sent Ms. Reynolds a letter advising that she was expected to complete the medication test by 5:00 p.m. on July 23, 2015 and that successfully completion of the medication test was being added as a condition of her employment. Ms. Reynolds received the letter on July 21, 2015.

Ms. Reynolds cites a belief that she was being harassed by Ms. Erskin as an additional basis for her decision to quit the employment. Ms. Erskin did not interview or hire Ms. Reynolds. At the time of hire, Ms. Reynolds thought she had an agreement with the employer regarding her work hours and work days. Ms. Reynolds believed she had been hired to work the evening shift. Ms. Reynolds' shift preference and days of availability remained an issue of contention throughout the employment. One Ms. Reynolds completed her orientation, Ms. Erskin assigned Ms. Reynolds to work the overnight shift. Ms. Reynolds generally worked the overnight until the end of the employment. Ms. Reynolds desired not to work on Monday, Tuesday or Wednesday, due to a need to attend to her dog's health issues. The employer was displeased by Ms. Reynolds' attempts to control the days she was scheduled to perform work. During the employment, the employer rejected Ms. Reynolds' CPR credentials, forced her to go off work, reversed its decision and allowed her to return to work, then again reversed its decision regarding whether to accept her credentials.

REASONING AND CONCLUSIONS OF LAW:

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.

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 871 IAC 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 evidence in the record indicates that Ms. Reynolds voluntarily quit the employment due to substantial changes in the conditions of the employment. The substantial change came when the employer notified Ms. Reynolds that she would have to complete a medication test as a condition of continuing in the employment and when the employer told Ms. Reynolds that she would be demoted to performing nursing assistant duties until she passed the medication test. The evidence indicates that Ms. Reynolds had a medication error on June 10 and another on July 7. The July 7 error was repeated twice during the same shift. The employer's concern about patient care and proper administering of medications was reasonable. However, the medication errors had not been especially egregious and had occurred about a month apart. The errors had not been numerous. The employer did indeed substantially change the conditions of the employment, when the employer made successful completion of the medication test as a condition of continuing the employment. The employer did indeed substantially change the conditions of the employment, when the employer told Ms. Reynolds she would be demoted to performing nursing assistant duties pending successful completion of the medication test. The proposed demotion was indeed demeaning to Ms. Reynolds. Based on these changed conditions in the employment, Ms. Reynolds' voluntary quit was indeed for good cause attributable to the employer. Accordingly, Ms. Reynolds is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

The evidence regarding the disputed work hours is insufficient to establish a change in the working conditions based on that issue. Given the nature of the employment, Ms. Reynolds' expectation that the employer would schedule around the health needs of her dog was unreasonable.

The evidence does indeed establish intolerable and detrimental working conditions based on the proposed demeaning demotion and the loss of wages that Ms. Reynolds suffered in connection with that issue and in connection with earlier decisions to temporarily remove Ms. Reynolds from work. The evidence indicated that the proposed demotion was not based established policy, but was instead selectively imposed on Ms. Reynolds. While it is never good for a nurse to make a medication error, the employer went well above and beyond what was reasonable in addressing the matter with Ms. Reynolds. Thus, the evidence establishes a

second basis for concluding that Ms. Reynolds's voluntary quit was for good cause attributable to the employer.

DECISION:

The August 12, 2015, reference 01, decision is affirmed. 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

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Decision Dated and Mailed

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