

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATILINE A GASKINS

Claimant

APPEAL NO. 16A-UI-08412-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HIGLEY MANSION INC

HIGLEY MANSION CARE CENTER

Employer

OC: 07/03/16

Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Catiline Gaskins filed a timely appeal from the July 26, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that the Ms. Gaskins had voluntarily quit on June 29, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 26, 2016. Ms. Gaskins participated. Wendy Albers represented the employer and presented additional testimony through Marylou Heacock.

ISSUE:

Whether Ms. Gaskins separated from the employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Catiline Gaskins was employed by Higley Mansion as a full-time Resident Assistant from July 2015 until June 28, 2016, when she voluntarily the employment due to perceived intolerable and detrimental working conditions and due to a perceived reduction in work hours. Ms. Gaskins' supervisor was Marylou Heacock, Direct of Nursing. Ms. Gaskins would also answer to the charge nurse on duty.

Prior to commencing the employment, Ms. Gaskins had allowed her certified nursing assistant (CNA) certification to lapse. Ms. Gaskins was not working as a CNA when she was employed by Higley Mansion Care Center. While about 60 percent of the employer's nursing assistants are certified, the other 40 percent are not and work under the title resident assistant. The employer reports the CNAs' work hours to the appropriate state body that tracks those work hours. The employer is not required to report, and does not report, work hours performed by the resident assistants such as Ms. Gaskins. Toward the end of the employment, Ms. Gaskins was upset when she learned the employer has not been reporting her work hours to the state licensing board. However, because Ms. Gaskins was not a CNA during the employment and

did not perform work for the employer as a CNA, she had no reason to expect the employer would report her work hours to the state licensing board.

Ms. Gaskins' decision to quit the employment followed a series of very unfortunate personal experiences. On May 6, 2016, Ms. Gaskins' mother passed away. Ms. Gaskins' emotional state was severely impacted by the experience. Effective June 1, 2016, Ms. Gaskins became homeless. Ms. Gaskins met with Ms. Heacock to discuss her predicament and to request that she be assigned to work the evening shift, from 2:00 p.m. to 10:00 p.m. in light of her homelessness. Ms. Heacock agreed to schedule Ms. Gaskins for the evening shift and thereafter scheduled her for four or five evening shifts per week. Ms. Gaskins subsequently erroneously concluded that Ms. Heacock had discussed her personal affairs with other staff. Ms. Heacock had shared information only with Wendy Albers, Administrator, who was part of the management team. Ms. Gaskins overheard one or more CNAs or Resident Assistants comment that Ms. Gaskins was using her mother's passing to get special treatment in the workplace. Ms. Gaskins spoke to Ms. Heacock about the matter and Ms. Heacock indicated she would put an end to the comments. Ms. Gaskins continued to overhear the offhand comment from coworkers regarding favorable treatment.

Toward the end of the employment, Ms. Gaskins called in absent for multiple shifts. On June 21, 2016, Ms. Heacock and Ms. Albers met with Ms. Gaskins to discuss her attendance issues. Ms. Gaskins from been absent from work on June 19 and 20. While the employer had planned to discharge Ms. Gaskins from the employment due to the attendance issues, Ms. Heacock and Ms. Albers recognized that Ms. Gaskins was in crisis. They were concerned for Ms. Gaskins' wellbeing and concerned that Ms. Gaskins' emotional state might lead her self-harm. The employer decided not to discharge Ms. Gaskins from the employment at that time and told Ms. Gaskins that the employer would give her another chance. Ms. Heacock helped Ms. Gaskins connect with a mental health counselor. Ms. Gaskins was supposed to work a shortened evening shift on June 21, from 5:00 p.m. to 10:00 p.m., but did not appear for the shift.

Ms. Gaskins was next scheduled to work a 2:00 p.m. to 10:00 p.m. shift on June 27, 2016. Ms. Gaskins worked that shift and then was scheduled to work a similar shift on June 28, 2016. On June 28, Ms. Gaskins telephoned the charge nurse on duty and told her, "I can't fucking do this anymore. It's stressing me out." Ms. Gaskins did not appear for her shift on June 28 and did not make further contact with the employer. Ms. Heacock tried unsuccessfully to reach Ms. Gaskins on June 28 and 29. Ms. Gaskins did not make further contact with the employer. Though the additional absences would have led to Ms. Gaskins being discharged from the employment, the employer never got a chance to communicate that Ms. Gaskins.

Ms. Gaskins cites a purported cut in her work hours as the primary basis for her decision to leave the employment. However, the employer did not cut her work hours. On the schedule that the employer posted on June 11, 2016, the employer scheduled Ms. Gaskins to work the 2:00 p.m. to 10:00 p.m. shift on June 27, 28, and 30, and on July 1, 2, 3, 5 and 8. On the schedule the employer posted on June 25, 2016, the employer scheduled Ms. Gaskins to work 2:00 p.m. to 10:00 p.m. on July 12, 13, 14, 16, 17, 19 and 20.

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 fails to establish either a change in the contract of hire or intolerable and detrimental working conditions. The evidence establishes instead that Ms. Gaskins was under a great deal of emotional pressure as a result of her dire personal circumstances and made a rash decision on June 28, 2016 to terminate the employment. Ms. Gaskins voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Gaskins is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Gaskins must meet all other eligibility requirements. The employer's account shall not be charged for benefits paid to Ms. Gaskins.

DECISION:

The July 26, 2016, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs