IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CANDICE A MCGEE-MADLOCK Claimant **MAINSTREAM LIVING INC** Employer	**APPEAL NO. 20A-UI-15527-JTT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/09/20** **Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 30, 2020, reference 06, decision that disqualified the claimant for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on August 13, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 25, 2021. The claimant participated. Marcanne Lynch represented the employer and presented additional testimony through Erica Voll, Abby Day, and Laura Weiler. Exhibits 1 through 9 and A through E 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 was employed by Mainstream Living, Inc. as a full-time Assistant Team Leader (ATL). The claimant began the employment on July 13, 2020 and last performed work for the employer on August 13, 2020. At the time the claimant initially interviewed with the employer during the spring of 2020, the employer advised the claimant that the wage range for ATLs was from $13.00 to $21.00. Before the claimant began the employment, the employer confirmed that the claimant academic credentials would be a factor in her hourly wage. The claimant has a bachelor's degree. The employer provided the claimant with an offer letter that omitted the hourly pay rate. However, the employer notified the claimant prior to her start in the employment that her pay rate would be $15.00 per hour. The claimant was under the impression that her ultimate pay rate would be $15.00 per hour plus any additional amount added in light of her academic credentials. However, the employer factored the claimant's academic credentials when setting the $15.00 pay rate. The claimant was disappointed when she received her first pay check on or about August 8, 2020 and saw that the pay was only $15.00 per hour.

During the interview process the employer advised the claimant that her work hours would be Monday through Friday with potential weekend work and that she could expect to spend about

half of her time performing administrative duties and the other half providing direct care to clients. The claimant began the employment with the expectation that full-time employment meant 40 hours per week. However, the employer defines full-time employment as 35 or more hours per week. During the week that ended July 25, 2020, the claimant worked 30.4 hour. The claimant has asked for a day off that week. During the week that ended August 1, 2020, the employer paid the claimant for 36.76 hour of work, though 24 of those hours were for three days the claimant had to remain off work due to a potential COVID-19 exposure. During the week that ended August 8, 2020, the claimant was paid for 35.4 hours, but worked two or three additional hours for which her supervisor told her she would not be paid. The employer subsequently advised the claimant that she would be paid for all hours worked. During the last week of the employment, the claimant worked 23.1 hours for a partial week. That week included the derecho on August 10, 2020.

Once the claimant was in the employment, the claimant found the working conditions to be less favorable than anticipated. The claimant's supervisor never provided the claimant with a work schedule. Instead, the claimant's supervisor would assign work hours and tasks on a daily basis, often at the last minute. Early on, the supervisor directed the claimant to drop in on a direct support professional early in the morning because the employer suspected that employee was sleeping on the job. The claimant's supervisor subsequently notified the claimant that she had stayed too long at the particular residence and, therefore, would not be paid for an hour of her time there. The claimant's supervisor also notified the claimant that she would not be paid for substantial time she spent on the phone with the supervisor. Another employer representative subsequent told the claimant that she was to be paid for all work hours. The claimant suspected the supervisor was editing her time reports on a regular basis to reduce the hours for which the claimant would be paid. The claimant's work time had to be coded according to the work she was performing and the location where she performed the work. The supervisor amended the claimant's time reporting entries for this purpose. The claimant encountered ongoing conflicting messages concerning what her supervisor was telling her versus what other agency representatives told her. This includes information regarding whether the claimant would be paid for all of her work time. The claimant's supervisor had an established reputation for being abrasive and the claimant was repeatedly on the receiving end of such interactions during the brief employment.

The employment relationship reached a moment of crisis on August 13, 2020. At a point when the claimant believed she had finished her work for the day, the supervisor directed the claimant to collect supplies from the employer's office and immediately take the supplies to the client residence where the claimant was supposed to work the next morning. When the claimant indicated a desire to just take the items with her to the home the following morning, the supervisor raised her voice and went into a rant about how long she had worked for the employer and how no one had ever questioned her directives as she perceived the claimant to be questioning her directives. The claimant responded to the office as directed. Shortly after the claimant arrived at the office, the supervisor called the claimant again and recommenced yelling and ranting. The claimant put the phone on speaker so the receptionist could hear the yelling and ranting. The receptionist saw how upset the claimant was by the interaction and advised the claimant to terminate the call. The receptionist then contacted Human Resources Manager Abby Day and put the claimant on the phone with Ms. Day. The claimant spoke with Ms. Day for an extended period, during which time Ms. Day referenced the supervisor's history of abrasive conduct. While the claimant was speaking with Ms. Day, the claimant's supervisor again tried to call the claimant and Ms. Day told the claimant to disregard the call. Ms. Day made an appointment with the claimant to meet the following morning. The claimant elected not to appear for the meeting. At one point, the claimant requested to no longer work with the particular supervisor and to be moved to a different team. The employer told the claimant that

any such move would be at the discretion of her supervisor. The claimant did not return to the employment. The employer attempted to reengage the claimant prior to sending a letter that stated the employer would deem the claimant to have voluntarily quit if she did not make contact with the employer. The claimant provided information regarding work time for which she had not been paid, but did not return to the employment.

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).

Iowa Admin. Code r. 871-24.25(13), (21) and (23) provides:

> Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.
> …
> (21) The claimant left because of dissatisfaction with the work environment.
> (22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.26)(1), (4) and (23) 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.

…
(4) The claimant left due to intolerable or detrimental working conditions.
…
(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

The test is whether work conditions were intolerable and detrimental includes consideration of 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).

"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).

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. *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. *Id.*

The evidence in the record establishes a voluntary quit for good cause attributable to the employer. A number of the issues that arose in the brief employment can be chalked up to miscommunication and misunderstanding, such as the claimant's understanding of what constituted full-time employment versus the employer's definition of what constituted full-time employment. Others may be attributed to the claimant not being a good fit. However, other issues speak to a good cause basis for quitting the employment. The evidence establishes irregularities in the employer's handling of the wage discussion. In addition, the evidence in the record establishes that the supervisor created intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment, especially with such circumstances occurring so early in the employment. An employer has the right to expect decency and civility from its employees. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Likewise, an employee reasonably expects to be dealt with in a civil manner in the workplace. The weight of the evidence establishes that the supervisor repeatedly yelled at and bullied the claimant. In addition, the supervisor told the claimant she would not be paid for time she spent performing work, despite the employer's policy. The supervisor contradicted and undermined other information and directives provided by other managers. A reasonable person, especially someone new to the employment, would have cut their losses and left the employment, rather than commit to the chaotic, oppressive conditions

created the supervisor. The weight of the evidence indicates that the claimant tried to make the best of it until she reached her breaking point on the afternoon of August 13, 2020. The weight of the evidence establishes that the employer witnesses sugar-coated their testimony regarding the supervisor's known abrasive demeanor. The supervisor conceded that she can be perceived as loud. Under the circumstances, a reasonable person would interpret that as an admission that she did in fact yell at the claimant. Multiple employer witnesses repeatedly responded with one version or another of "I do not recall" to questions the claimant would only know to ask if discussions about the supervisor's abrasive and bullying demeanor had occurred as the claimant testified they did. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The October 30, 2020, reference 06, decision is reversed. The claimant voluntarily quit the employment effective August 13, 2020 for good cause attributable to the employer. The claimant is eligible for benefits, provided the claimant 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

February 16, 2021
Decision Dated and Mailed

jet/scn