IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LISA M FLANDERS
Claimant

CABARET ANKENY LLC
Employer

APPEAL NO. 14A-UI-11768-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/22/13
Claimant: Respondent (5)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 4, 2014, reference 02, decision that allowed benefits to the claimant and that held the employer's account could be charged; based on an Agency conclusion that the claimant was discharged for no disqualifying reason. After due notice was issued, a hearing was held on December 8, 2014. Claimant Lisa Flanders participated and presented additional testimony through Doug Aldridge. Andrew Martin represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. Exhibits A through K and Department Exhibits D-1 through D-5 were received into evidence.

ISSUE:

Whether Ms. Flanders 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: Cabaret Ankeny, L.L.C. operates a bar and restaurant of the same name. Andrew Martin is a member shareholder, Chief Executive Officer, and de facto General Manager. Doug Aldridge is also a member shareholder. There is an ongoing disagreement between the two owners regarding how Mr. Martin came to hold himself out as majority shareholder. The relationship between the owners is strained and this affects all aspects of business operations, with Mr. Martin reserving to himself all final decisions regarding the business.

Lisa Flanders was employed by Cabaret Ankeny as the full-time manager from July 1, 2014 until October 12, 2014 when she voluntarily quit by walking out in the middle of a busy shift. Ms. Flanders had agreed to work that day due to there being a big event scheduled and due to the employer being short-staffed. Ms. Flanders' decision to separate from the employer was based primarily on Mr. Martin's ongoing support for Joe Fontana. Mr. Fontana was supposed to be a vendor providing pizza sauce but did not fulfill the vendor agreement. Despite that failure to perform, Mr. Martin elected to continue a business relationship with Mr. Fontana and Mr. Fontana became an hourly kitchen employee. Though the owners had delegated to

Ms. Flanders the authority to supervisor, hire, and fire staff, Mr. Martin vetoed Ms. Flanders' decision and attempt to sever the relationship between Mr. Fontana and Cabaret Ankeny. Mr. Fontana's continued presence and ongoing business and personal relationship with Mr. Martin was upsetting to Ms. Flanders. Mr. Fontana was openly and consistently insubordinate to Ms. Flanders. Mr. Fontana was in the habit of directing offensive, abusive utterances, and conduct at Ms. Flanders. In September, Mr. Fontana had telephoned Ms. Flanders from the workplace while she was away from the workplace. During the call, Mr. Fontana ranted about receiving poor customer service. Mr. Fontana threatened to "tell the town" about the poor customer service and asserted that Ms. Flanders should be fired. Ms. Flanders soon learned that Mr. Fontana had been drinking at work and was still on the clock. Until September 5 Mr. Fontana had tried to get Ms. Flanders to go out with him. Mr. Fontana would come to the employer's bar while he was off-duty and would make crude comments about Ms. Flanders in the presence of customers while Ms. Flanders was working at the bar. These included, "Look at her ass," "Look at her tits," "Why don't you show us your tits?" Ms. Flanders was also in fear of Mr. Fontana, based on her knowledge of his prior alleged assaultive behavior. In early October, Mr. Fontana responded to Ms. Flanders inquiry about a lack of ingredients for menu items and a lack of kitchen staff by telling her "This is fucking bullshit" and that he was going to deal with Mr. Martin, not Ms. Flanders.

On October 8, 2014 Ms. Flanders submitted her written resignation to the owners and provided November 14, 2014 as her last day in the employment. While Ms. Flanders referenced Mr. Fontana, "Joey," as the number one reason for her resignation, she went on to provide the employer with a long list of things she thought the employer was doing inappropriately and how she would operate the establishment differently.

On October 9 Mr. Flanders contacted Mr. Fontana about several menu items that could not be served because Mr. Fontana had not prepared or provided necessary ingredients. Mr. Fontana responded with a text message in which he stated that Ms. Flanders did not know how to do her job, that Ms. Flanders engaged in "extracurricular activities," and that she was stupid. Mr. Fontana's offensive conduct also included sending Ms. Flanders a text message in which he told her she was stupid. Ms. Flanders told Mr. Fontana that his services were no longer needed.

Ms. Flanders was upset on October 12, 2014 when she learned that Mr. Fontana was onsite to assist with the big event. Ms. Flanders complained to Mr. Martin and insisted that Mr. Martin remove Mr. Fontana from the workplace. Mr. Martin declined to do that and Ms. Flanders walked out at 1:30 p.m. Mr. Martin concluded she had quit and notified other staff of the quit. Later in the evening on October 12 Ms. Flanders had returned to the workplace to collect personal effects and assist with closing out the cash register. She learned from staff at that time that Mr. Martin had announced her quit. The next day, Ms. Flanders attempted to remotely log into the employer's computer system and her access had been removed.

Ms. Flanders subsequently corresponded with Mr. Aldridge about the possibility of Mr. Aldridge becoming sole owner of the business and the possibility of her continuing her business relationship with Mr. Aldridge. Based on that discourse, Ms. Flanders attempted to rescind her resignation through her discussion with Mr. Aldridge. Mr. Martin would not acquiesce in removing himself from the business. Mr. Martin gave no indication that he was acquiescing in rescission of Ms. Flanders' resignation.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The weight of the evidence in the record establishes a voluntary quit, not a discharge. Based on the written resignation on October 8, and Ms. Flanders walking out in the middle of a big event on October 12, 2014, Mr. Martin reasonably concluded that Ms. Flanders had quit the employment. The fact that Ms. Flanders may have reconsidered, at least with regard to continuing her business relationship with Mr. Aldridge, did not alter that fact that her words and actions communicated a voluntary quit.

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.

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).

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).

The evidence in the record indicates a voluntary quit that was for good cause attributable to the employer. First and foremost, the employer gave tacit approval to ongoing offensive utterances and conduct perpetrated by Mr. Fontana, a person who was supposed to be Ms. Flanders' subordinate. Mr. Fontana's conduct, and Mr. Martin's refusal to take reasonable steps to address it, gave rise to intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment. Secondly, Mr. Martin's decision to remove from Ms. Flanders the authority to direct the work of subordinates, or to discharge misbehaving subordinates, amounted to a substantial change in the conditions of the employment.

Because Ms. Flanders voluntarily quit the employment for good cause attributable to the employer, she is eligible for benefits, provided she is otherwise eligible, and the employer's account may be charged for benefits.

DECISION:

The November 4, 2014, reference 02, decision is modified as follows. The claimant voluntarily quit the employment for good cause attributable to the employer effective October 12, 2014. 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

_____
Decision Dated and Mailed

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