IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

RANDOLPH CAMP Claimant **PER MAR SECURITY & RESEARCH CORP** Employer	**APPEAL 20A-UI-06598-HP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/24/20** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2) – Discharge Due to Misconduct

STATEMENT OF THE CASE:

Claimant Randolph Camp filed an appeal from a June 18, 2020 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer, Per Mar Security & Research Corp. ("Per Mar"). Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for July 24, 2020. Camp appeared and testified. Randy Mulder appeared and testified on behalf of Per Mar. Exhibits 1 through 7 were admitted into the record. I took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

Camp commenced employment with Per Mar as a security officer on November 21, 2018. Camp worked thirty-two hours per week for Per Mar at EMC, on Saturday and Sunday from 8:00 a.m. until 4:00 p.m., and on Monday and Tuesday from 4:00 p.m. until 12:00 a.m. Mike Lovell was Camp's immediate supervisor. Mulder is the general manager.

Addison DeLong was the lead officer at the EMC. DeLong worked Monday through Friday, 8:00 a.m. through 4:00 p.m., for Per Mar at EMC. DeLong requested his hours be adjusted due to a personal issue, so that he could work evenings, Monday through Friday at EMC, from 4:00 p.m. until 12:00 a.m. As a lead officer, DeLong was the primary contact with EMC. EMC agreed DeLong could change his hours, as long as he worked Monday through Friday.

On January 20, 2020, Martin Luther King Day, Mulder called Camp at home and told him he needed to adjust his hours. Mulder told Camp DeLong was moving to evenings, and he was assigning DeLong to Camp's shifts on Monday and Tuesday from 4:00 p.m. until 12:00 a.m., at EMC. Mulder did not adjust Camp's hours on Saturday and Sunday. Camp was scheduled to work that evening from 4:00 p.m. until 12:00 a.m. and Mulder told him not to come into work.

Camp was upset because he liked his schedule and he wanted to continue to work evenings on Mondays and Tuesdays. Mulder told Camp he would try to accommodate his schedule. Mulder told Camp there was an opening at the Temple for the Performing Arts, but the shifts were from 6:00 p.m. until 10:00 p.m. Camp objected to the shift. Mulder relayed he would try to find eight hour shifts for Camp during the hours he wanted to work.

Camp was upset and believed Mulder was discriminating against him on the basis of race and age. Camp testified no one at Per Mar made any discriminatory comments to him on the basis of race or age during his employment and he did not believe Mulder or anyone at Per Mar had discriminated against him on the basis of race or age before January 20, 2020.

Camp told Mulder he had been thinking about other opportunities and he resigned. Camp reported he did not complain about discrimination to anyone else at Per Mar because Mulder was the general manager.

Mulder testified Camp was an excellent employee and he is eligible for rehire.

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: . . . .If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "'voluntary quit' means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

871 Iowa Administrative Code 24.25(21) 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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer: . . . .
>
> (21) The claimant left because of dissatisfaction with the work environment.

871 Iowa Administrative Code 24.26(1) and (4) provide:

> **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:
>
> **24.26(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.

24.26(4) The claimant left due to intolerable or detrimental working conditions.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. *See Wiese v. Iowa Dept. of Job Serv.,* 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. Emp't Appeal Bd.*, 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. Emp't Appeal Bd.*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

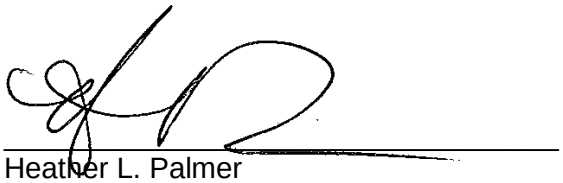
If the claimant establishes the claimant left due to intolerable or detrimental working conditions, benefits are allowed. Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. The Iowa Administrative Code was amended in 1995 to include an intent-to-quit requirement. The requirement was only added, however, to 871 Iowa Administrative Code 24.26(6)(b), the provision involving work-related health problems. No intent-to-quit requirement was added to 871 Iowa Administrative Code 24.26(4), the intolerable working conditions provision. The Iowa Supreme Court concluded that, because the intent-to-quit requirement was added to 871 Iowa Administrative Code 24.26(6)(b) but not 871 Iowa Administrative Code 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988) ("good cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Emp't Sec. Comm'n*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787, 788 (Iowa 1956) ("good cause attributable to the employer need not be based upon a fault or wrong of such employer"). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, the claimant is not required to give the employer any notice with regard to the alleged intolerable or detrimental working conditions prior to quitting. However, the claimant must prove the claimant's working conditions were intolerable or detrimental.

Mulder called Camp on January 20, 2020, and he told him not to come to work that evening. Camp had been working Mondays and Tuesdays from 4:00 p.m. until 12:00 a.m. at EMC. Mulder offered Camp a position at the Temple for the Performing Arts from 6:00 p.m. until 10:00 p.m. The hours were not the same and the location of the work was not the same. I find this constituted a change in the contract of hire and that Camp left with good cause attributable to the employer. Benefits are allowed.

DECISION:

The June 18, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.



Heather L. Palmer
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July 31, 2020
Decision Dated and Mailed

hlp/sam