

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAJANICE W KNOCHENMUS
Claimant

APPEAL NO. 12A-UI-09346-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NAYMEERA INC
Employer

OC: 07/01/12
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 26, 2012, reference 01, decision that allowed benefits based on an agency conclusion that the claimant had voluntarily quit for good cause attributable to the employer due to a change in the contract of hire. After due notice was issued, a hearing was held on September 18, 2012. Claimant LaJanice Knochenmus did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Jessie Ankum represented the employer and presented additional testimony through Kendrick Ankum.

ISSUE:

Whether Ms. Knochenmus separated from the employment for a reason that would disqualify her for unemployment insurance benefits. The administrative law judge concludes that Ms. Knochenmus voluntarily quit without good cause attributable to the employer when she elected to separate from the employment rather than accept the employer's first proposal, that she transfer to the employer's Jacolyn Drive store and work only slightly changed hours.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operates multiple businesses in the Cedar Rapids metropolitan area. Two of those businesses are Puff N' Stuff tobacco and hookah stores. LaJanice Knochenmus was employed as a full-time cashier at the employer's Puff N' Stuff tobacco and hookah store at 1545 1st Avenue from February 2012 and last performed work for the employer on July 2, 2012. Ms. Knochenmus' work hours were 1:00 to 9:00 p.m. five days per week. Ms. Knochenmus' wage was \$7.50 per hour. Ms. Knochenmus' immediate supervisor was Jessie Ankum, who was manager for both Puff N' Stuff stores. Ms. Ankum worked primarily at the employer's 171 Jacolyn Drive store. Ms. Ankum's husband, Kendrick Ankum, worked as a clerk at the employer's First Avenue store with Ms. Knochenmus.

On June 26, Ms. Ankum noticed in the cash register transaction records for the day before a customer order that had been documented as free. Ms. Ankum reviewed surveillance video that showed Kendrick Ankum using Ms. Knochenmus' cash register, and Ms. Knochenmus allowing

Mr. Ankum to use her register, on June 25. It was a violation of the employer's policy to allow someone else to use the assigned register.

On July 2, 2012, Ms. Ankum questioned Ms. Knochenmus about cash register irregularities that indicated additional orders had been documented on the cash register as free. The irregular transaction records had been entered under Ms. Knochenmus' confidential login information. Ms. Knochenmus denied knowledge or involvement in the irregularities and asserted she had not counted the cash drawer at the end of the previous day's business. The drawer was short \$600.00. Ms. Ankum had interviewed another clerk, Latisha, who had told Ms. Ankum that she and Ms. Knochenmus had both assisted with counting the drawer.

Due to the multiple cash register irregularities involving Ms. Knochenmus' login, Ms. Ankum initially decided to remove Ms. Knochenmus from the First Avenue store to the Jacolyn Drive store and to have her work 11:00 a.m. to 7:00 p.m. Ms. Ankum did not want to discharge Ms. Knochenmus from the employment, but wanted to more closely monitor Ms. Knochenmus. Ms. Knochenmus indicated she could not work the changed hours, even through the change was just to move the shift two hours earlier.

Ms. Ankum and the business owner subsequently decided that Ms. Knochenmus would need to work at the employer's restaurant, Alladin, and would need to show up at 11:00 a.m. on July 5, 2012. Ms. Knochenmus did not appear on July 5. Instead, Ms. Knochenmus established a claim for unemployment insurance benefits.

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.

Iowa Code section 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.

871 IAC 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 weight of the evidence indicates that Ms. Knochenmus elected to separate from the employer rather than accept changes to the conditions of her employment. The first proposed set of changes was to move from one of the employer's First Avenue store to the employer's Jacolyn Drive store some five miles away and to report for work and get off work two hours earlier. The pay would remain the same. Ms. Knochenmus rejected the transfer solely on the basis of the change in hours. The administrative law judge concludes that this set of proposed changes did not rise to the level of substantial changes in the conditions of the employment. The proposal that Ms. Knochenmus go to work at the employer's restaurant is a different story. The administrative law judge found Ms. Ankum's assertion that Ms. Knochenmus would make a \$7.50 per hour straight wage as a server in a sit-down restaurant not credible. The proposed change in duties from clerk to restaurant worker would have involved substantial changes in the conditions of the employment.

Because Ms. Knochenmus had the option of performing essentially the same duties at the employer's other Puff N' Store with only slightly changed hours, but for the same pay, the administrative law judge concludes that Ms. Knochenmus voluntarily quit the employment without good cause attributable to the employer. The administrative law judge notes that the restaurant work proposal only came up after Ms. Knochenmus rejected working at the employer's other store. In other words, the restaurant position was not Ms. Knochenmus' only option. Ms. Knochenmus is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an

overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representatives July 26, 2012, reference 01, decision is reversed. 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, provided she is otherwise eligible. The employer's account shall not be charged. The employer's account will not be charged for benefits paid to the claimant.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw