

lodged in her mail slot. The mail slot allowed the postal carrier to slide mail through the exterior wall of Total Perfections so that it lands on the floor inside the business. The envelope that contained the Notice of Claim was lodged conspicuously in the slot and had only recently been placed in the slot by the postal carrier or some other individual. When Ms. Graham discovered the Notice of Claim, she submitted the employer's protest the same day.

Cassie Boitnott was employed by Total Perfections as a full-time cosmetologist from February 17, 2005 through July 29, 2005. On July 28, Ms. Boitnott advised Ms. Graham that she intended to quit the employment and was providing two weeks' notice. On July 29, Ms. Graham advised Ms. Boitnott that there was no need to have Ms. Boitnott fulfill the two-week notice period.

Ms. Boitnott decided to quit the employment because the actual conditions of employment did not match the conditions of employment discussed at the time of the interview. At the time of the interview, Ms. Graham had advised Ms. Boitnott that she would receive a 10 percent commission on any retail products she sold. Ms. Boitnott would inquire about the commission on a monthly basis and Ms. Graham would advise that she was working on it. Ms. Boitnott believes her total commission for retail sales would have amounted to \$50.00-\$75.00 over the course of the employment. Ms. Graham indicates she has a check for Ms. Boitnott for ten percent of \$264.00 in sales, but apparently has not provided the check to Ms. Boitnott. At the time of the interview, Ms. Graham had advised Ms. Boitnott that the employer would provide all necessary tools except scissors and combs. Ms. Graham provided Ms. Boitnott with a blow dryer that soon ceased working. Ms. Graham then provided Ms. Boitnott with a blow dryer that was nearly broken and not presentable. Ms. Graham refused to provide Ms. Boitnott with a new blow dryer, though the employer stocked blow dryers for retail sale.

At the time of the interview, Ms. Graham advised Ms. Boitnott that Ms. Boitnott would receive a 60 percent commission on the services she performed. This commission and the commission from sale of retail products comprised Ms. Boitnott's entire compensation package. Ms. Boitnott's commission on haircuts was reduced by a promotion the employer had initiated prior to the start of Ms. Boitnott's employment. Total Perfection had promoted its business by offering customers a free hair cut after they purchased ten haircuts. At the time of the interview, Ms. Boitnott was not advised of the promotion or the impact on her income. On four occasions, Ms. Boitnott was required to honor the promotion by providing a customer with a free haircut, though Ms. Boitnott had not enjoyed any of the commission for the prior ten haircuts. In total, Ms. Boitnott believes she lost \$34.00 in haircut commissions based on the promotional card. Ms. Boitnott was uncomfortable with the promotion and made her feelings known to Ms. Graham. Ms. Graham allowed Ms. Boitnott to opt out of the promotion. Soon thereafter, a customer attempted to use the promotional card after Ms. Boitnott had cut the customer's hair. Ms. Graham had performed the ten previous haircuts that entitled the customer to a free haircut. When Ms. Boitnott advised the customer she did not participate in the promotion, the customer looked irritated. Ms. Boitnott looked to Ms. Graham for support and asked Ms. Graham to confirm that the customer needed to redeem the free haircut with Ms. Graham. Ms. Graham instructed Ms. Boitnott to allow the customer to use the promotional card and that Ms. Graham and Ms. Boitnott would work things out later. However, Ms. Graham did not compensate Ms. Boitnott for the free haircut. Instead, Ms. Graham advised Ms. Boitnott that this was how things were going to work and ended the discussion.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the employer's protest should be deemed timely. For the reasons set forth below, the administrative law judge concludes it should.

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The evidence in the record establishes that delay in submission of the employer's protest of the Notice of Claim was due to delay or other action of the United States Postal Service. Accordingly, the administrative law judge deems the protest timely and concludes he had jurisdiction regarding the issues pertaining to the separation from employment.

The next question is whether the evidence in the record establishes that Ms. Boitnott's voluntary quit was for good cause attributable to the employer. For the reasons set forth below, the administrative law judge concludes it was.

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 evidence in the record indicates the Ms. Boitnott's quit was prompted by the employer's consistent failure to pay her commission on retail sales, by the employer's refusal to support her in being paid for her services, and by the employer's refusal to provide promised equipment. The evidence in the record does not establish that Ms. Boitnott acquiesced in any of these conditions of employment that failed to match the employer's representations at the time of the interview. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Boitnott's quit was for good cause attributable to the employer. Accordingly, Ms. Boitnott is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Boitnott.

DECISION:

The Agency representative's decision dated August 24, 2005, reference 03, is modified as follows. Agency representative's decision that the protest was untimely is reversed. The protest is deemed timely. The Agency representative's decision regarding the claimant's eligibility for benefits and the employer's liability for benefits it affirmed. The claimant quit for good cause attributable to the employer. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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