

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY L PERKINS
Claimant

APPEAL NO. 08A-UI-00123-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

R T VOGEL INC
PURSEL-DAVIS FUNERAL HOMES
Employer

OC: 12/09/07 R: 02
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Sherry Perkins filed a timely appeal from the January 2, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing commenced on January 31, 2008 and concluded on February 1, 2008. Ms. Perkins participated. Funeral Home Consultant Robert Brooks represented the employer and presented additional testimony through Kelly Vogel, owner. Exhibits One, Two, 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: Sherry Perkins was employed by Pursel-Davis Funeral Homes as a full-time office manager from September 2004 until December 13, 2007, when she voluntarily quit. At the time Ms. Perkins quit, the employer was undergoing a period of transition following an expansion and the untimely death of owner Rick Vogel. Mr. Vogel passed away in March 2007. Mr. Vogel had secured the services of Funeral Home Consultant Robert Brooks in connection with the business expansion. When Mr. Vogel suffered a heart attack at the beginning of March 2007, Mrs. Kelly Vogel asked Mr. Brooks to assist with business operations. After Mr. Vogel passed away at the end of March, Mrs. Vogel retained Mr. Brooks' continued assistance in operating the business for which she was now primarily responsible. Mrs. Vogel was not familiar with the day-to-day operations of the funeral home business, whereas Mr. Brooks had substantial experience. Mr. Brooks spent the first month analyzing business operations at Pursel-Davis. Mr. Brooks then began to implement changes to improve operational efficiency.

Prior to Mr. Brooks' direct involvement in business operations, Ms. Perkins' office manager duties included attending to the various tasks involved in serving the families of decedents. In addition, Ms. Perkins was responsible for ordering supplies and writing checks to pay for minister services or musical services. When Mr. Vogel passed away, Ms. Perkins assumed responsibility for the accounts payable. The employer had been planning to switch from one

software program to another and this transition occurred during the fall of 2007. Prior to Mr. Brooks' direct involvement in business operations, Ms. Perkins' duties involved running errands up to three times a day to make bank deposits or trips to the County Recorder's office. Mr. Brooks recommended to Mrs. Vogel that Ms. Perkins skill could be better utilized by hiring an employee to perform the family services portion of Ms. Perkins duties and in July, Ms. Vogel hired Jill Severson to take over these duties. Mrs. Vogel directed Ms. Perkins to provide Ms. Severson with the necessary training to perform these duties.

In October, the employer began in earnest its transitions to a QuickBooks accounting system. The goal of the employer was to increase the accounting processes performed in-house and reduce reliance on an outside accountant. The employer relieved Ms. Perkins of her family services responsibilities to free up Ms. Perkins so that she could perform more on the daily accounting responsibilities. In October, Ms. Perkins assumed responsibility for payroll and accounts receivable. Ms. Perkins was not comfortable with Mr. Brooks' role in business operations or in the change in her duties. Ms. Perkins expressed her opinion to Mrs. Vogel that she thought Mr. Brooks' involvement in the business was unnecessary, but Mrs. Vogel viewed Mr. Brooks' involvement as essential. Ms. Perkins continued in the employment, but drew less enjoyment and satisfaction from her work and the work environment.

On December 13, 2007, Mr. Brooks met with Ms. Perkins to discuss changes he was making in daily operations. Mr. Brooks had received prior approval from Mrs. Vogel to make the changes. Mr. Brooks provided Ms. Perkins with three memos, the first of which was specific to Ms. Perkins' employment. Ms. Perkins' workday had previously been from 8:00 a.m. to 5:00 p.m., Monday through Friday, with occasional weekend work as needed. Ms. Perkins had received an hour lunch break, which the employer thought expanded beyond an hour without an appropriate accounting for the extra time away. Mr. Brooks notified Ms. Perkins that her lunch break was being reduced to 30 minutes, but that she would be provided with a 15-minute break in the morning and afternoon. Mr. Brooks notified Ms. Perkins that she would be responsible for making certain a qualified person manned the telephone while she was on break. Mr. Brooks notified Ms. Perkins that she would be expected to remain on-site except during lunch or breaks. Mr. Brooks notified Ms. Perkins that her errand-running responsibilities would be assumed by another employee who did not have her skills and who was available to perform the errands. Mr. Brooks notified Ms. Perkins that the needs of the business might require her to miss lunch on occasion, but that the employer would provide comp time later in the week. Ms. Perkins' start time and quit time did not change. Ms. Perkins' pay did not change. Mr. Brooks further notified Ms. Perkins that if Ms. Severson was not performing her family services duties as expected, or not available as needed, the employer would need to take steps to address that with Ms. Severson. Ms. Perkins had functioned as Ms. Severson's de facto supervisor. The other two memos banned cell phones from the work place and required absent employees to notify Mr. Brooks directly. Mr. Brooks ended the meeting with Ms. Perkins and traveled to a meeting in Des Moines.

After Mr. Brooks left on December 13, Ms. Perkins left for lunch and did not return. When Mr. Brooks returned later in the day, the other employees still had not heard from Ms. Perkins. Mr. Brooks called and left a voice mail message on Ms. Perkins telephone. Mr. Brooks requested clarification on Ms. Perkins' intentions and requested the access code for the accounting program. Ms. Perkins called Mr. Brooks that evening, indicated she quit and provided an access code for the software program. Mrs. Vogel was out of state at a conference when she learned that Ms. Perkins had walked out. Ms. Vogel left a message for Ms. Perkins and Ms. Perkins returned the call. Ms. Perkins said she could no longer work with Mr. Brooks.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

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).

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).

Quits prompted by a personality conflict with a supervisor or dissatisfaction with the work environment are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(22) and (21).

The evidence in the record establishes that there were changes in the conditions of employment. The evidence indicates that the most substantial changes occurred on or before

October 2007 and involved an increase in Ms. Perkins' accounting duties. The evidence indicates that changes implemented on December 13, 2007 may have been uncomfortable for Ms. Perkins, but did not amount to substantial changes in the conditions of her employment. Though Ms. Perkins' lunch hour was to be shortened, Ms. Perkins was to receive two 15-minute breaks to compensate. The reassignment of the errand-running responsibilities was not detrimental to Ms. Perkins. The prospect of an occasional missed lunch, with compensatory time later in the week, was not unreasonable, given the nature of the business. The evidence in the record indicates that the changes that prompted Ms. Perkins' quit did not rise to the level of substantial changes in the conditions of the employment that would justify a quit. The evidence also fails to establish intolerable or detrimental working conditions that would have prompted a reasonable person to quit the employment.

The greater weight of the evidence in the record establishes that Ms. Perkins quit the employment due to dissatisfaction with Mr. Brooks' management approach. Mr. Brooks' management style was more demanding than Mr. Vogel's management style had been. The quit was based on dissatisfaction with a supervisor and dissatisfaction with the work environment. Neither reason amounted to good cause attributable to the employer under the applicable law.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Perkins voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Perkins 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 for benefits paid to Ms. Perkins.

DECISION:

The Agency representative's January 2, 2008, reference 01, decision is affirmed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw