IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BILLIE L SMITH
Claimant

FREEDOM RACING TOOL & AUTO LLC
Employer

APPEAL NO. 16A-UI-11491-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/25/16
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Billie Smith filed a timely appeal from the October 18, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Smith had voluntarily quit on September 28, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 8, 2016. Ms. Smith participated. Tad Whittom represented the employer and presented additional testimony through Christy Whittom. Exhibit A was received into evidence.

ISSUE:

Whether Ms. Smith'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: Billie Smith was employed by Freedom Racing Tool and Auto, L.L.C. as a full-time order taker from April 2016 until September 27, 2016, when she voluntarily quit due to changes in the conditions of the employment and due to conduct within the work environment. Ms. Smith's duties throughout the employment involved taking customers' tool orders by telephone. Ms. Smith's wage throughout the employment was $10.50 per hour. On September 26, 2016, Tad Whittom and Christy Whittom, the business owners, notified Ms. Smith that they were changing her work duties and pay. Instead of taking orders by telephone, Ms. Smith was to begin training as an order picker within a week and move into the order picker position. Instead of working in the employer's office suite, Ms. Smith would work in the employer's warehouse. Instead of making $10.50 per hour, the employer would reduce Ms. Smith's pay to $9.50 per hour effective 60 days after September 26, 2016. Ms. Smith was unhappy with the reduction in pay. On the next day, Ms. Smith gave notice she was quitting the employment. Mr. Whittom asked Ms. Smith to meet and discuss her reason for leaving. A meeting took place on September 28. The meeting did not change employer's decision to change the duties or pay and did not change Ms. Smith's decision to leave the employment.

Ms. Smith cites another concern as a basis for her decision to quit the employment. Ms. Smith shared an office suite with several other people, including Christy Whittom. Ms. Smith was regularly exposed to vulgar language and references that made her uncomfortable. Such language was part of the workplace culture and was tolerated by the employer. On September 23, the human resources manager, a woman, yelled across the room to another female employee, "Dirty rotten cunt." On that same day, a male coworker involved reference to Ms. Smith as part of a vulgar discussion. One male employee said that another was into older women. Then a male coworker referenced that Ms. Smith was a grandmother, that is, an older woman. On September 26, a male coworker stated to the group that if he was married to a particular person he would have to masturbate all the time. Mr. and Mrs. Whittom were present for the utterance. At other times in the employment, employees would blurt out vulgarities in Ms. Smith's presence such as "What the fuck is wrong with you" and "oh my fucking God." A couple of coworkers were in the habit of asking Ms. Smith, "What the fuck do you want" when she needed to interact with them regarding a customer order.

REASONING AND CONCLUSIONS OF LAW:

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.

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 established a voluntary quit based primarily on substantial changes in the conditions of the employment. These included the wage cut from $10.50 per hour to $9.50. That amounted to a 9.5 percent decrease in pay. That change by itself was sufficient to establish a voluntary quit for good cause attributable to the employer. The change from performing office work to warehouse work also involved a substantial change in the conditions of the employment. Ms. Smith was not obligated to wait the 60 days until the pay cut took effect. Indeed, the law would view such delay in quitting as acquiescence in the changed conditions. Ms. Smith promptly quit the employment, rather than acquiesce in the changed conditions. Without taking into consideration the language considerations, the evidence establishes a voluntary for good cause attributable to the employer.

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).

The weight of the evidence also establishes a voluntary quit for good cause attributable to the employer based on the employer's tolerance of a workplace culture in which employees routinely employed vulgar, offensive language. An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Employees have a similar right to expect decency and civility from the employer and coworkers and to work in an environment free of vulgar, offensive language. The weight of the evidence establishes that such vulgar language was indeed part of the workplace culture. Ms. Smith worked in an office environment. A reasonable person would find such language in an office environment inappropriate and unacceptable. A reasonable people could find such an environment both intolerable and detrimental, and especially so when the utterances were directed at that person. A reasonable person may well be prompted to leave as a result.

Because Ms. Smith voluntarily quit for good cause attributable to the employer, she is eligible for benefits provided she meets all other eligibility requirements and the employer's account may be charged.

DECISION:

The October 18, 2016, reference 01, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs