

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DYLAN J MCLAUGHLIN
Claimant

SUNSET VENTURES LLC
Employer

APPEAL NO. 19A-UI-07232-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/25/18
Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Dylan McLaughlin filed a timely appeal from the September 6, 2019, reference 09, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. McLaughlin voluntarily quit on August 2, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 3, 2019. Mr. McLaughlin participated. Kyle Dehmlow represented the employer.

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: Dylan McLaughlin was employed by Sunset Ventures, L.L.C. as a part-time, seasonal bartender. Mr. McLaughlin began the employment on June 25, 2019 and last performed work for the employer on August 2, 2019. Mr. McLaughlin then ceased appearing for work and ceased contact with the employer. Mr. McLaughlin had decided to quit the employment due to his dissatisfaction with the number of hours he received and his perception that coworkers were rude. During a portion of the employment, the employer was unable to provide Mr. McLaughlin with work hours because Mr. McLaughlin had not completed and returned the required proof of identity and work authorization materials. When Mr. McLaughlin provided proof that he was authorized to work in the United States, the employer had created the work schedule for the next week and, therefore, was unable to provide work hours to Mr. McLaughlin for that week. The employer had hours for Mr. McLaughlin on the following week's schedule and continued to have work for Mr. McLaughlin at the time, Mr. McLaughlin elected to sever the employment relationship. Mr. McLaughlin's decision to leave the employment was based on his perception that coworkers were rude. At the time Mr. McLaughlin decided to leave the employment with Sunset Ventures, he had interviewed with and was confident that he would be hired by a Manly Care Center for a full-time position. Manly Care Center elected not to offer employment to Mr. McLaughlin following a background check.

REASONING AND CONCLUSIONS OF LAW:

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)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Administrative Code rule 871-24.26(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 213 (Iowa 2005).

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).

When a claimant elects to leave employment due to dissatisfaction with the work environment, the quit is presumed to be without good cause attributable to the employer. See Iowa Admin. Code rule 871-24.25(21).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. Mr. McLaughlin left the employment due to dissatisfaction with the work environment at a time when the employer still had work available to him. Mr. McLaughlin's temporary loss of work hours was self-inflicted. The evidence in the record fails to establish intolerable and/or detrimental working conditions that would prompt a reasonable person to leave the employment. The weight of the evidence fails to establish any substantial change in the conditions of the employment. The weight of the evidence fails to support Mr. McLaughlin's assertion that he had accepted other employment prior to leaving this employment. Mr. McLaughlin presented insufficient evidence to prove that he had an offer. The evidence indicates instead that Mr. McLaughlin had applied for and interviewed for a position, was overconfident that he would receive an offer of employment, and did not receive an offer of employment following a background check. The employer, through its questions of Mr. McLaughlin, effectively highlighted the inconsistencies in and the general unreliability of Mr. McLaughlin's testimony. Mr. McLaughlin repeatedly back-peddled and revised assertions during cross-examination by the employer. Mr. McLaughlin is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. McLaughlin must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The September 6, 2019, reference 09, decision is affirmed. The claimant voluntarily quit the employment effective August 2, 2019 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs