

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER J USHER
Claimant

APPEAL NO. 11A-UI-02886-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COVENANT MEDICAL CENTER
Employer

**OC: 01/16/11
Claimant: Respondent (2)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 2, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 31, 2011. Claimant participated. Kris Marmie represented the employer and presented additional testimony through Shirley Dunlap. Exhibits One, Two and Three were received into evidence. The administrative law judge took official notice of the Agency's administrative record regarding benefits disbursed to the claimant, which record indicates that no benefits have been disbursed in connection with the claim that was effective January 16, 2011.

ISSUE:

Whether Ms. Usher'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: Jennifer Usher was employed by Covenant Medical Center as a full-time Registered Nurse from July 2009 until January 17, 2011 when she voluntarily quit because the employer would not allow her to audio record a meeting. Ms. Usher had worked as a floor nurse until she transferred to the Ambulatory Surgery and Recovery Unit on October 12, 2010. The nursing duties were similar, but the new position was somewhat faster paced. On January 14, 2011, Shirley Dunlap, Manager of the Ambulatory Surgery Unit, suspended Ms. Usher with pay in connection with multiple incidents that called into question Ms. Usher's ability to successfully perform the duties in the new position. On January 15, Ms. Dunlap left Ms. Usher a voice mail message in which she assured Ms. Usher she would continue as an employee.

The employer scheduled a meeting with Ms. Usher on January 17, 2011 to discuss the employer's decision to return Ms. Usher to a floor nursing position and to have Ms. Usher participate in further training to ensure her ability to successfully perform her duties. The duties in the floor position would be comparable, but slower paced. All other conditions of the employment would remain the same.

Ms. Usher had only received her nursing license in 2009 and was concerned the employer might take action that would jeopardize her license. The employer had no such plans. Ms. Usher believed the employer had undermined her success in the new unit by pulling her from training to perform work on the unit. Ms. Usher appeared at the January 17, 2011 with another nurse she wanted as a witness to the meeting. The employer acquiesced. Ms. Usher then presented a recording device. The employer indicated it was contrary to the employer's established practices to allow recording of discussions. When the employer conveyed that it would not allow Ms. Usher to record the meeting, Ms. Usher got up to leave. The employer asked Ms. Usher whether her actions were intended as resignation from the employment. Ms. Usher confirmed they were. Based on Ms. Usher's premature departure from the meeting and resignation from the employment, the employer was deprived of an opportunity to discuss its plans for Ms. Usher's continued employment.

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.

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).

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).

On the other hand, voluntary quits due to dissatisfaction with the work environment are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21). A voluntary quit in response to a reprimand are also presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28).

The weight of the evidence establishes that Ms. Usher's voluntary quit was prompted by the employer's refusal to audio tape the January 17, 2011. The employer had an established policy of not taping such meetings. The employer had a reasonable basis for its policy: the employer desired a frank two-way discussion of the issues. A reasonable person would expect that given the employer's specific concerns about Ms. Usher's work performance that confidential patient information provided by HIPAA regulations might also be involved. The weight of the evidence establishes that Ms. Usher's concern about loss of her nursing license as a result of the employer's actions was unfounded and unreasonable. The employer's refusal to allow Ms. Usher to audio tape the meeting did not create intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. The employer's plans to laterally move Ms. Usher back to a floor nursing position and have her participate in additional training did not involve a significant change in the conditions of the employment. In any event, the employer never got to discuss that matter with Ms. Usher and, therefore, it could not have been a basis for the quit.

The administrative law judge concludes that Ms. Usher voluntarily quit for personal reasons, including dislike of the work environment as she experienced it, and not for good cause attributable to the employer. Accordingly, Ms. Usher 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. Usher.

Because there have been not benefits disbursed, there is not overpayment to be addressed.

DECISION:

The Agency representative's March 2, 2011, 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.

Because there have been no benefits disbursed, there is not overpayment to be addressed.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css