

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**BETTY J DUNKIN  
2830 WINEGARD DR APT 709  
BURLINGTON IA 50601**

**BURLINGTON CARE CENTER INC  
2610 S 5<sup>TH</sup> ST  
BURLINGTON IA 50601**

**Appeal Number: 04A-UI-03462-DT  
OC: 02/22/04 R: 04  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Betty J. Dunkin (claimant) appealed a representative's March 17, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Burlington Care Center, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 19, 2004. The claimant participated in the hearing. Teletha Guiter appeared on the employer's behalf and presented testimony from two other witnesses, Cindi Talbott and Lori Steward. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES: Did the claimant voluntarily quit for a good cause attributable to the employer? Was she subsequently discharged prior to the effective date of her intended quit?

#### FINDINGS OF FACT:

The claimant started working for the employer on December 12, 1994. She worked full time as a certified nursing aide (CNA) in the employer's long-term care nursing facility. Her last day of work was February 24, 2004.

The claimant had previously been warned that she was to hang her coat in the back break room rather than in a utility area. On February 24, as the claimant was going outside for a morning break, the facility administrator, Ms. Guiter, again reprimanded the claimant for hanging her coat in the utility area. About ten minutes later when the claimant returned from break, she was again reminded to hang her coat in the back break room, not the utility area. The claimant began to vigorously argue the subject with the director of nursing, Ms. Talbott, because she did not believe it was a fire hazard as the employer claimed and she did not think it should be such a problem to put the coat in the utility area. After a few minutes of arguing, the claimant took a piece of paper and wrote out "I am giving you my 2 week notice" and gave it to Ms. Talbott. The claimant and Ms. Talbott continued to argue about the hanging of the coat, and finally Ms. Talbott indicated that the claimant could go ahead and leave. The claimant then proceeded toward the exit.

On her way out, the claimant commented to another employee that she had just been fired. Ms. Steward, the assistant director of nursing, had witnessed the interaction between the claimant and Ms. Talbott, and twice told the claimant that she had not been discharged, that she was being allowed to leave for the day to calm down, but that she could return to work for the period of her two-week notice. The claimant left. She returned the next day with a form for Ms. Guiter to complete for rental assistance to indicate that her employment with the employer had ended. She did not inquire of Ms. Guiter whether she could continue to work through her two-week notice. Ms. Guiter signed the form as she did not wish to impair the claimant's ability to receive rental assistance and she only understood the form as indicating that the employment had ended without indicating whether it was a quit or a discharge.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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 24.25 provides that, 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 from whom the employee has separated. The claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code Section 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. Benefits are denied at least as of her initial effective quit date, March 9, 2004.

The next issue in this case is whether the claimant in actual fact voluntarily quit effective immediately on February 24 or whether she was discharged prior to the effective date of her quit. The employer did not tell the claimant she was "discharged" or "fired," only that she could go ahead and leave. Prior to the claimant's departure, a supervisory representative of the employer affirmatively clarified to her that she had not been discharged for the two-week period prior to the effective date of the quit, but that she was being allowed to leave for the day because of how upset she had become. The claimant was not reasonable in concluding that she had been discharged. An employee who mistakenly believes she has been discharged, but has never been clearly told she was discharged or fired, and who therefore ceases reporting for work, is deemed to have voluntarily quit. The claimant effectively quit on February 24. For the reasons previously discussed, her quit was not for a good cause attributable to the employer. Benefits are denied as of February 24, 2004.

#### DECISION:

The representative's March 17, 2004 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of February 24, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

ld/kjf