

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CLAIMANT
Claimant

APPEAL 19A-UI-08158-DG

**ADMINISTRATIVE LAW JUDGE
PUBLIC DECISION**

EMPLOYER
Employer

**OC: 09/15/19
Claimant: Appellant (2)**

Iowa Code § 235B.6
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire
Iowa Admin. Code 871-24.26(4) – Intolerable Work Conditions

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 11, 2019, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, an in-person hearing was scheduled for and held on December 11, 2019 in Ottumwa, Iowa. Claimant participated. Employer participated by Brooke Vondal, Human Resources Manager. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 15, 2019. Claimant resigned from the employment on September 20, 2019 after she received a bonus check which was less than she was promised when she was hired.

Claimant began working for employer as a part-time registered nurse on February 25, 2019. Claimant is an experienced nurse and she had offers from several employers when she decided to work for employer on that date. At the time of hire, claimant was told that she would receive a \$4,000.00 sign-on bonus which would be paid to her in four \$1,000.00 installments every three months while she was employed. Claimant signed a sign-on bonus agreement which had language at the bottom of the document about how the bonus would be paid. Claimant asked the administrator who is no longer at the facility what the language meant. Claimant was told that it was boiler plate language, and that she would receive the full \$4,000.00 bonus in four equal installments.

After the first three months' claimant received notice that her first bonus check would be less than the agreed upon amount of \$1,000.00. Claimant contacted management and the issue was eventually resolved in her favor, and claimant did receive the full \$1,000.00 bonus amount.

On September 20, 2019 claimant received a bonus check in the amount of \$750.00. Claimant discussed the matter with the human resources officer at the facility. Claimant was told that her bonus was being pro-rated based on the number of hours she worked. Claimant explained that she had been told she would receive the full \$4,000.00 in \$1,000.00 installments. Claimant was very upset, and she submitted her resignation later on that date.

Claimant also had other concerns which caused her to resign. Sometime during the summer of 2019 claimant discovered that employer was intentionally trying to conceal ongoing abuse allegations. Claimant was told by several certified nurses' assistants that there had been ongoing sexual abuse of a resident at the facility. The nursing assistants told claimant that they would dress the female resident in long pants to prevent her from being raped. Claimant believed that the medical staff had been discouraged to report the incident as required by Iowa law by the employer.

Claimant also believed that the employer's resident fall policy was inappropriate. Some of the residents needed extra care, and they would end up on the floor after they fell from their chair, or out of bed. Claimant was told by employer to leave at least one of the residents on the floor because she may be praying. Claimant did not agree with employer's policy.

Claimant discussed her concerns with the director of nursing, and administration. Claimant was not aware of any pending changes to the employer's policies. Claimant decided that she must resign from the employment on September 20, 2019 because employer would not pay her the agreed upon sign-on bonus, and because employer's rules and policies were putting her nursing license in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.26(3) 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:

(3) The claimant left due to unlawful working conditions.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942).

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). A refusal to accept a night shift position at a sanitarium constitutes a good cause quit attributable to the employer when that shift would endanger the claimant's health. *Forrest Park Sanitarium v. Miller*, 333 Iowa 1341, 11 N.W.2d 582 (Iowa 1943).

Claimant rejected other offers of employment and accepted employer's offer because of a \$4,000.00 sign-on bonus. Claimant relied upon employer's explicit promise that she would

receive the entire \$4,000.00. Employer breached their promise. Claimant's fear that her nursing license could have been placed in jeopardy because of employer's systematic failure to act on alleged reports of abuse was reasonable. Claimant left the employment because her work environment was intolerable, her separation from employment was for a good-cause reason attributable to the employer. Benefits are allowed.

DECISION:

The October 11, 2019, (reference 01) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn