

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA A FONTANA

Claimant

APPEAL NO. 17A-UI-04906-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATHENE EMPLOYEE SERVICES LLC

Employer

OC: 04/16/17

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated May 3, 2017, reference 01, which denied unemployment insurance benefits, finding the claimant voluntarily quit work on April 13, 2017, and finding that the claimant's quitting was not caused by the employer. After due notice was provided, a telephone hearing was held on May 25, 2017. Claimant participated. The employer participated by Ms. Tina Finn, Senior Human Resource Advisor.

ISSUE:

The issue is whether the claimant quit employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Lisa Fontana began employment with Athene Employee Services, LLC on November 9, 2015. Ms. Fontana was hired to work as a full-time corporate paralegal reporting to the company's executive vice president of legal affairs. The employer reserved the right to assign other duties and responsibilities to the claimant in the future. The agreement of hire indicated the claimant's principal place of employment to be the company offices located in the state of Iowa and the agreement specified that the claimant could be assigned by the company to work for any of its group companies or elsewhere in the world where the employer was actively conducting business.

On April 7, 2016, approximately five months after accepting employment with the company, the company agreed, at the claimant's request, to let allow her to telecommute from home that she and her husband had recently purchased in Humboldt, Iowa, to her normal place of employment in West Des Moines, Iowa. Under the terms of the agreement, Ms. Fontana would work Monday and Friday from her home and work in the office on Tuesday, Wednesday and Thursday each week. The agreement specified that the telecommuting was not an employee benefit nor a contract or a promise and contained the caveat "the company may terminate the

agreement at any time for any reason.” Ms. Fontana signed the agreement and began working from home two days per week and from the office three days.

As time progressed, Ms. Fontana was assigned to work under different managers and a number of additional job responsibilities were required by the employer. Although the claimant's new job responsibilities required training and technical expertise, Ms. Fontana remained employed and the employer considered the claimant's performance to be satisfactory.

In February 2015, the claimant was placed under the supervision of John Bolton, a senior vice president. During this time, the company was re-evaluating a number of telecommuting positions within the company. After review of the matter, the employer made a management decision to end the telecommuting for the claimant as well as a number of other employees. During this time, Ms. Fontana's husband underwent back surgery and the couple was residing in Humboldt, Iowa. Ms. Fontana was informed that the company was exercising its right to end her telecommuting, but offered the claimant the option of working four 10-hour days to minimize the claimant's travel to and from work as far as possible.

Because she had been informed of the decision by Mr. Bolton, a senior vice president, and the claimant was aware that the employer had retained the right to end the agreement, Ms. Fontana believed the employer's decision to be final on the matter and did not seek the assistance of the company's human resource department before tendering her written resignation on April 3, 2017. The claimant's resignation stated only that she was leaving her employment with the company.

It is the claimant's position that she left employment because the change in the telecommuting agreement had caused her anxiety and made it more difficult for her to provide care to her husband following his back operation. (The claimant had requested and been granted FMLA time away from work prior to leaving.) It is the claimant's further position that the changes in her job duties required technical skills beyond her abilities and that she did not believe that she had been provided sufficient training for her new responsibilities. Ms. Fontana agrees that she would have remained employed by the company had she been allowed to telecommute.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left the employment with good cause that was attributable to the employer. It does not.

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.

Iowa Admin. Code r. 871-24.25(30) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence

that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

Iowa Admin. Code r. 871-24.25(23) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

Iowa Admin. Code r. 871-24.25(2) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(2) The claimant moved to a different locality.

In the case at hand, the evidence in the record establishes that Ms. Fontana, when hired, was assigned to work full-time in the employer's offices located in West Des Moines, Iowa. After approximately five months of employment, the claimant and her husband has purchased a home in Humboldt, Iowa, and Ms. Fontana requested permission to telecommute working Mondays and Fridays from home and Tuesdays, Wednesdays and Thursdays in the West Des Moines office. The employer was agreeable, but emphasized in the agreement itself that it was not a promise or contract and the employer was free to rescind the telecommuting agreement at any time based upon its business needs.

Ms. Fontana continued to be employed working under the terms of the telecommuting agreement, and was given and accepted various additional job duties. The employer was satisfied with the claimant's performance in the new job duties and the company records did not reflect the claimant had complained about the changes in her duties or her level of competence in performing the duties.

Ms. Fontana left her employment with Athene Employee Services, LLC after the company had made a management decision to return a number of workers to offices and end telecommuting, after reviewing the issue company-wide. Although the employer had offered the claimant the accommodation of only requiring her to come to the office four days a week and working longer each day, Ms. Fontana declined and submitted her resignation from employment. Ms. Fontana knew, based upon the contents of the agreement itself, that agreement to let her telecommute was not a permanent agreement and was subject to change at any time based upon the employer's needs. The employer did not consider the claimant's job performance to be substandard and her employment was not in jeopardy. Ms. Fontana made a personal decision to leave her employment and to seek employment closer to home, where she would be available to provide additional assistance to her husband who was recuperating from surgery.

While the claimant's reasons for leaving this employment were undoubtedly good cause reasons from a personal viewpoint, for the above stated reasons the administrative law judge concludes that the claimant's reasons were not good cause reason attributable to the employer and the employer was under no obligation to allow the claimant to continue to telecommunicate. Ms. Fontana was aware of that fact when she entered into the telecommuting agreement with the company. Because the claimant left employment without good cause attributable to the employer, unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated May 3, 2017, reference 01, is affirmed. The claimant left work without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs