

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHYLENA J WOODSMALL
Claimant

APPEAL NO. 07A-UI-09583-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSHALLTOWN COMM SCHOOL DIST
Employer

OC: 09/09/07 R: 02
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Marshalltown Community School District (employer) appealed a representative's October 4, 2007 decision (reference 01) that concluded Chylena J. Woodsmall (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 29, 2007. The claimant participated in the hearing. Kevin Posekany, Patrick Hemming, and Lisa Koester appeared on the employer's behalf. 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.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on May 29, 1996. The employer hired the claimant to work as a full-time custodian on second shift during the school year and during the day in the summer. The claimant did not want to work around children.

Prior to her employment separation, the claimant had been working as the lead custodian on second shift. Since the claimant began working, she always worked second shift during the school year. As a result of attendance issues, Hemming, the claimant's supervisor, informed her on August 1 that the employer was demoting her and she would not be working as the lead custodian. Until the employer filled the lead custodian position, the claimant continued working as the lead custodian on second shift. Hemming urged the claimant to bid for other second shift jobs.

After a new lead custodian had been hired, the employer informed the claimant that as of August 27, she would temporarily work as a custodian on the day shift, or from 7:00 a.m. to 4:00 p.m., instead of working of 3:30 to 11:30 p.m. Although the transfer was temporary, the claimant became upset and quit when she learned the employer transferred her to a day-shift job. The employer did not hire anyone to work a second shift job until late October 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The law presumes a claimant leaves employment with good cause when she quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The evidence indicates that in accordance with its policy, the employer had no choice but to “temporarily” transfer the claimant to first shift during the school year. The employer asserted the reason for the transfer was not the employer’s fault. In Wiese v. Iowa Department of Job Service, 389 N.W.2d 676 (Iowa 1986), the Iowa Supreme Court stated: “We believe that a good faith effort by an employer to continue to provide employment for his employees may be considered in examining whether contract changes are substantial and whether such changes are the cause of an employee quit attributable to the employer.”

In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court stated that:

It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer.... [G]ood cause attributable to the employer can exist even though the employer be free from all negligence or wrongdoing in connection therewith.

(Id. at 702.) Dehmel, the more recent case, is directly on point with this case. Therefore, the fact the change in hours may have been due to circumstances beyond the employer’s control, under the reasoning of Dehmel, is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer.

The next issue is whether changing the claimant’s hours from second shift to first shift during the school year is a substantial change in the contract of hire. As a matter of law, the change in the claimant’s hours of work from second shift to first amounts to a substantial change in the claimant’s employment. The claimant established good cause to leave employment.

DECISION:

The representative’s October 4, 2007 decision (reference 01) is affirmed. The claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. As of September 9, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer’s account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw