

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

DIANE M MAKOVEC
2975 DAVENPORT ST
DUBUQUE IA 52001

AREA RESIDENTIAL CARE INC
1170 ROOSEVELT ST EXT
DUBUQUE IA 52001-1464

Appeal Number: 04A-UI-12669-DT
OC: 10/31/04 R: 04
Claimant: Appellant (2)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Diane M. Makovec (claimant) appealed a representative's November 24, 2004 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Area Residential Care, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 20, 2004. The claimant participated in the hearing. Lynda Steinwand appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Three and Claimant's Exhibits A through C were 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.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on January 5, 2004. She worked part time as a certified medication aide (CMA) in the employer's sheltered vocational workshop for adults with developmental disabilities. Her work schedule in that position was Monday through Friday, 10:00 a.m. to 2:00 p.m. Her last day of work was October 29, 2004.

On October 18, 2004, the claimant received a notice from the employer dated October 15 that she was being "bumped" from her CMA position. The claimant understood that she could transfer into another available position and did review the available positions. However, the only positions available for which the claimant was qualified required routine weekend work; when the claimant had been hired, she had stressed that while she might be willing to work an occasional weekend shift, she did not want a position that routinely called for weekend shifts.

When as of October 25 the claimant had not chosen a position into which to transfer, the employer assigned her to a new part time instructor position to begin November 1, 2004. The claimant met with the supervisor of the department and learned that she would be required to work every other weekend, and would only have approximately 24 hours per pay period, rather than the 40 hours she had been working. On October 29 she submitted her resignation, primarily due to there being no position available for her to transfer into that did not require routine weekend work, and secondarily due to the reduction in hours in the position into which the employer proposed to transfer her.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit 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 24.26(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.

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). The change in the claimant’s work schedule, which was to have been implemented was a substantial change in the claimant’s contract of hire. Dehmel, supra. Benefits are allowed.

DECISION:

The representative’s November 24, 2004 decision (reference 02) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/pjs