

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LYNN K LEE**  
Claimant

**APPEAL NO. 15A-UI-12464-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY**  
Employer

**OC: 02/22/15**  
**Claimant: Respondent (4/R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.27 – Voluntary Leaving Part Time Employment  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Good Samaritan Society (employer) appealed a representative's November 5, 2015, decision (reference 02) that concluded Lynn Lee (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 1, 2015. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Whitney Schott, Dietary Supervisor; Libby Faffler, Administrator; and Mary Heller, Business Office Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 28, 2015, as a part-time dietary assistant with dishwashing duties. She worked three days per week from 6:30 a.m. to 2:30 p.m. and earned \$9.00 per hour. Job assignments, like who cleared tables and who served what tables, changed periodically. The claimant worked through October 1, 2015. On October 3, 2015, the claimant called the business office manager and stated she was quitting because she could make more money from unemployment benefits. The dietary supervisor called her back that same day and offered her full-time work. The claimant refused full-time work.

The claimant filed for unemployment insurance benefits with an effective date of February 22, 2015. The employer did not participate in the fact-finding interview on November 4, 2015, because it did not receive notice of the interview.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer, but has not requalified and is otherwise monetarily eligible.

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.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

Iowa Code section 96.5(1)g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the

individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

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). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer she was quitting and stopped working. When an employee quits work rather than perform the assigned work, her leaving is without good cause attributable to the employer. The claimant left work rather than perform the job assigned by the employer. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The separation from this employer is disqualifying and the claimant has not requalified for benefits since the separation. However, she is otherwise monetarily eligible according to base period wages. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of the claimant's refusal of full-time work is remanded for determination.

**DECISION:**

The representative's November 5, 2015, decision (reference 02) is modified in favor of the appellant. The claimant voluntarily left the employment without good cause attributable to the employer and has not requalified for benefits but is otherwise monetarily eligible. Benefits are allowed, provided the claimant is otherwise eligible. The account of this employer shall not be charged. The issue of the claimant's refusal of full-time work is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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