

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANA L MAGDEFRAU
Claimant

APPEAL NO: 10A-EUCU-00648-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 07/13/08
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Diana L. Magdefrau (claimant) appealed a representative's July 22, 2010 decision (reference 05) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Five Star Quality Care, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 20, 2010. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, 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 March 15, 2010. She worked full time as a dietary aide in the employer's Mediapolis, Iowa nursing and rehabilitation center. She worked varying days, but was scheduled to work from 5:00 a.m. to 2:30 p.m. Her last day of work was June 9, 2010.

The claimant discovered that there was more work required for the job than what she had told there would be. In order to get all of the work done satisfactorily, she would have needed to have been working "off the clock," which was at least tacitly encouraged by her supervisor. She was already working additional time by working during paid clock time she was supposed to be on break and not working. When the claimant refused to spend the additional time working "off the clock" that would have been necessary to satisfactorily complete the duties the employer expected of her, her supervisor indicated that she was not satisfied with the claimant's work performance. On June 9 the supervisor indicated to the claimant that because there had been no improvement in the claimant's job performance and she did not expect there would be sufficient improvement, she would give the claimant another week. The claimant determined to

quit rather than put in the additional “off the clock” hours that would have been necessary to improve her job performance to a satisfactory level.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Intolerable, detrimental, or illegal working conditions are good cause for quitting attributable to the employer. 871 IAC 24.26(4). The claimant has demonstrated that a reasonable person would find the employer’s work environment intolerable, detrimental, or illegal. O'Brien v. EAB, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). “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 claimant has established good cause attributable to the employer for quitting. Benefits are allowed.

DECISION:

The representative’s July 22, 2010 decision (reference 05) 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css