

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAMIDA B MOHAMED
Claimant

APPEAL NO: 09A-UI-16290-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMES COMMUNITY SCHOOL DIST
Employer

OC: 05/31/09

Claimant: Appellant (1/R)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Hamida B. Mohamed (claimant) appealed a representative's October 22, 2009 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Ames Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 4, 2009. The claimant participated in the hearing. Carol Hundertmark appeared on the employer's behalf and presented testimony from one other witness, Mary Jo Tungesvik. Nancy Gamil served as interpreter. 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 November 18, 2008. She worked on call as a substitute educational assistant. Her last day of work was September 15, 2009.

There were two methods under which the claimant could receive work assignments, either being called by phone as needed, or checking on line for daily opportunities. On October 1 the claimant came into the employer's offices, and told the scheduling secretary, Ms. Tungesvik, that she wished to be removed from the substitute list. She expressed that she wished to do this because she needed to be paid more currently than the month delay involved in working as a substitute, and so she wanted to find a position that was permanent, not substitute. As a result, Ms. Tungesvik removed the claimant's name from the list.

The claimant testified that she did not wish to be completely removed from the substitute list, but only wanted to change her status so she would no longer receive phone calls. She indicated she wished to continue to be able to check for substitute positions that were posted on line. A few days after October 1 the claimant attempted to check on line, only to find that her code number was no longer valid, since she had been removed from the substitute list. She did not contact the employer to inquire as to what the problem might be or to find out what she needed

to do to regain the ability to check for substitute positions on-line. At least in part she did not follow up with the school because of the same concerns about wanting a permanent position and wanting a position that paid more current than the substitute positions.

The employer can and would allow the claimant to return to the substitute list at any time the claimant would take action to reactivate her status, including having it set up for her to only take assignments on line. However, the pay arrangement would be the same month delay, as that is standard procedure for all substitute positions with the employer.

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.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

An issue as to whether the claimant was eligible for benefits even prior to the separation because of being strictly an on-call substitute employee arose as a consequence of the hearing. 871 IAC 24.22(2)(i)(3). This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's October 22, 2009 decision (reference 02) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work

equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the on-call substitute employment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs