

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELE L FLORES
Claimant

APPEAL NO. 12A-UI-09788-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRANDVIEW HEIGHTS INC
Employer

OC: 07/15/12
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Grandview Heights, Inc. filed a timely appeal from a representative's decision dated August 10, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 6, 2012. The claimant participated. The employer participated by Ms. Chris Wolf, administrator, and Ms. Joey Oxenfield, RN/director of nursing.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Michele Flores began employment with Grandview Heights, Inc. as a full-time licensed practical nurse in January of 2009. Ms. Flores was paid by the hour. Her immediate supervisor was the director of nursing, Ms. Joey Oxenfield. The claimant quit employment on or about July 13, 2012, by turning in her equipment and making herself not available for additional assignments.

In April 2012, Ms. Flores specifically requested to be placed in a job position that allowed her to work double shifts on weekend days instead of working her normal work shifts throughout the work week. Under the "Bailey Agreement," the claimant would work 32 hours per week and was considered to be employed 40 hours by the parties. Ms. Flores began the work shift and hours that she had requested and continued working until on or about July 13, 2012, when she relinquished her position by turning in her company equipment and leaving the premises without meeting with the company's director of nursing as agreed.

The week preceding Ms. Flores' choice to leave employment voluntarily, she was informed that additional overtime hours during the work week would no longer be available to her but that she could continue to work her regular "Bailey" hours of double shifts each weekend amounting to 40 hours of work per week. Because the claimant was dissatisfied that additional overtime work would no longer be available to her, she brought the matter to the attention of the facility's administrator, Chris Wolf. Ms. Wolf agreed to have the facility's director of nursing meet with

Ms. Flores on Friday, July 13, 2012, in hope that the claimant would remain employed. It was Ms. Wolf's intention that if any additional overtime hours were available, they might be assigned to the claimant. The employer's intention, however, was to limit overtime work for financial reasons. The claimant had not been guaranteed any overtime work at the time that she had requested and agreed to the "Bailey Agreement."

When Ms. Flores arrived at the facility and found that the administrator was not present, she did not choose to meet with Ms. Oxenfield, the director of nursing who was present, but instead chose to turn in her equipment and leave the premises. The claimant did not make herself available for the double work shift that week that she had been scheduled for. Based upon the claimant's failure to report for her scheduled work shift, the turning in of her equipment, and the failure of the claimant to respond messages by the employer, the employer reasonably concluded that Ms. Flores had chosen to relinquish her position with the organization.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant left employment with good cause attributable to the employer. She did not.

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(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. See Iowa Code section 96.6-2. An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in

order to give the employer an opportunity to address or resolve the complaint. See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

A voluntary quit requires evidence of an intention to sever the employment relationship and an overt act of carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Board, 492 N.W.2d 438 (Iowa App. 1992). In this case, the claimant's overt act was turning in her walkie talkie and equipment and the claimant's failure to report for scheduled work that weekend to work her normally scheduled double work shift. The administrative law judge finds the claimant voluntarily quit her employment.

Inasmuch as the claimant did not give the employer an opportunity to resolve her complaints prior to leaving employment, the separation was without good cause attributable to the employer. The evidence in the record establishes there was no change in the agreement of hire but that the claimant chose to leave employment because of personal dissatisfaction because the potential of overtime hours was no longer available to her. The claimant had requested and specifically agreed to work what was classified as a "Bailey Agreement," where the claimant was allowed to work double shifts per weekend amounting to 40 hours of work. While the claimant may have previously enjoyed some overtime work that was available to her, it was not a specific work requirement that overtime work be provided to the claimant and was not part of the agreement and the employer's management decision to limit overtime work to the claimant for business reasons was not a material breach of the agreement of hire between the parties.

Quits due to intolerable or detrimental working conditions are deemed to be good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstance. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 33 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993). The administrative law judge finds the claimant did not leave employment due to intolerable or detrimental working conditions.

For the reasons stated herein, the administrative law judge concludes that the claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual,

benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated August 10, 2012, reference 01, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until 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 issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw