

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA K JESSEN
Claimant

APPEAL NO. 11A-UI-04639-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 02/27/11
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-3-a – Refusal of Work

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 31, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 13, 2011. Claimant participated. Employer participated by Amy Potratz, human resources manager, and David Munoz, Storm Lake site manager. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant was employed with the employer from July 11, 2007 through March 8, 2011. The claimant was given three choices regarding her continued employment. The first two would have resulted in a substantial change in the claimant's contract of hire because she would be required to change her work location from Storm Lake, Iowa, to Carroll, Iowa, and go from part-time mornings to either full-time or part-time afternoon hours. The third choice was to take a layoff until staffing levels justified her return as a part-time manager in Storm Lake. She chose the third option. After she was off work on temporary layoff for two days, she was asked to come back to her job in Storm Lake. She felt this was not acceptable, because in the interim her old boss had resigned and there was no evidence that the staffing level had increased such as to justify her return so she submitted her resignation.

REASONING AND CONCLUSIONS OF LAW:

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.

Claimant was laid off due to lack of work. Her only choices to remain employed involved substantial changes in her contract of hire. This reason for leaving employment is with good cause attributable to the employer. After the claimant was laid off she was asked to return to work and she refused. Although claimant's refusal came in the form of a resignation, she had never returned to work, so her resignation was must be adjudicated as a refusal of work for job insurance eligibility purposes. See 871 IAC 24.24(2).

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Since the offer for work and the refusal occurred within the claimant's benefit year, the department has jurisdiction to consider whether the refusal is disqualifying. See 871 IAC 24.24(8). In each case of refusal, the department must make the determination of whether good cause exists for the refusal on its own merits as established by the facts. See 871 IAC 24.24(3).

Claimant refused to return because she was concerned about the change in her supervisor to someone who had asked her to tell her staff that she had not been laid off but that she was quitting to stay at home with her children. The claimant's testimony regarding this issue is credible and accepted. Second, she was concerned because the supervisor she had at the time of the layoff had just resigned. The claimant had reasonable concerns about the employer's motives in offering her a return to work under these circumstances. It is concluded that the claimant had good cause for her refusal of work.

DECISION:

The March 31, 2011, reference 01, decision is affirmed. Benefits are allowed, provided claimant is otherwise eligible.

Ron Pohlman
Administrative Law Judge

Decision Dated and Mailed

rrp/kjw