

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOANN L HURT**  
Claimant

**LUTHERAN SERVICES IN IOWA INC**  
Employer

**APPEAL 16A-UI-09907-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/07/16**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Admin. Code r. 871-24.25(3) – Quit to Seek Other Employment  
Iowa Admin. Code r. 871-24.25(21) – Dissatisfaction with Work Environment  
Iowa Admin. Code r. 871-24.25(27) – Quit Rather Than Perform Assigned Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 1, 2016, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant quit her employment because she was no longer willing to work the hours required. The parties were properly notified of the hearing. A telephone hearing was held on October 3, 2016. The claimant, Joann L. Hurt, participated. The employer, Lutheran Services in Iowa, Inc., participated through Nikki Jones, program supervisor.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a care coordinator, from January 20, 2016, until June 10, 2016, when quit her employment. Claimant submitted a two-week notice that she would be leaving her job, and she was allowed to work these two weeks. The “final straw” that compelled claimant to quit occurred in a staff meeting, when the employer circulated a sympathy card for a new employee who had a death in her family. The employer did not give claimant a sympathy card after she had a death in her family, and claimant felt this was unfair. Claimant waited to quit until she had the prospect of new employment. Claimant had not actually obtained new employment at the time she resigned.

Claimant also quit because the employer texted her while she was out on bereavement leave in mid-May. Claimant felt the employer should have waited until she returned from bereavement leave to let her know that she had been assigned a new case. Additionally, claimant testified that she quit because she was required to work outside of her assigned counties. When claimant was hired, she was assigned to work in Des Moines, Lee, and Henry counties. However, the employer assigned her a total of three cases that required her to travel outside of

these counties. According to claimant, two of these cases were assigned in March and lasted until May. The third case was assigned at the end of May, right after she gave notice that she would be quitting. Jones testified that claimant was assigned two cases outside her standard counties from February through early March. Additionally, according to Jones, claimant was assigned one additional case outside her normal counties at the end of her employment, but there was no travel required for this case. Jones stressed that travel is required of all employees, and she testified that claimant would have been told this during the interview process.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was without good cause attributable to the employer. Benefits are withheld

Iowa Code §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. 871-24.26(1) provides:

The following are reasons for a claimant leaving employment with good cause attributable to the employer:

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.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds Jones provided more credible testimony than claimant. Jones is responsible for hiring new employees, and her testimony that each employee is told they may have to travel outside of their standard assigned work area is believable and consistent with the expectations that any employer sets for employees who regularly travel as part of their job duties.

During the hearing, claimant testified that she quit because of the change in the terms of hire, specifically because she was required to travel outside of a specific range of counties. However, even accepting claimant's testimony as wholly credible, she continued to work for at least two months after that change. While she stated she told the employer she wanted to stay closer to home due to an ill family member, she did not testify that she told the employer this was more travel than she was told she would have to do and she objected to it based on her terms of hire. Claimant has not met her burden to establish she quit due to a change in her contract of hire.

Iowa Admin. Code r. 871-24.25 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:

- (3) The claimant left to seek other employment but did not secure employment...
- (21) The claimant left because of dissatisfaction with the work environment...
- (27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Here, claimant testified she quit after obtaining a lead on alternate employment. She had not yet obtained another job at the time she resigned. Claimant was upset about her employer not respecting her bereavement leave and not giving her a sympathy card.

Additionally, she disliked having to travel outside of her assigned counties. The average person in claimant's situation would not feel compelled to end her employment over these issues.

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). Claimant submitted a resignation letter and ended her employment. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

**DECISION:**

The September 1, 2016, (reference 02) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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