

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**Appeal Number: 04A-UI-12071-DT
OC: 10/10/04 R: 03
Claimant: Appellant (2)**

**HALEY J KING
1207 – 7TH ST
CORALVILLE IA 52241**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**SUCCESSFUL LIVING SUPPORTIVE
HOUSING PROGRAM
214 CHURCH ST
IOWA CITY IA 52245**

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**JUDITH O'DONOHUE
ATTORNEY AT LAW
116 N MAIN ST
PO BOX 307
CHARLES CITY IA 50616**

(Administrative Law Judge)

**JEAN GARTLEY
ATTORNEY AT LAW
122 S LINN ST
IOWA CITY IA 52240**

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Haley J. King (claimant) appealed a representative's November 2, 2004 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Successful Living Supportive Housing Program (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 21, 2004. The claimant participated in the hearing, was represented by Judith O'Donohue, attorney at law, and presented testimony from one other witness, Joshua Weber. Jean Gartley, attorney at law, appeared on the employer's behalf and presented testimony from three witnesses, Michael Bowers, Bev Hamann, and Karin Bowers.

During the hearing, Employer's Exhibits One through Three and Claimant's Exhibit A were entered into evidence. 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 3, 2003. She started as a part-time case aide, but effective March 22, 2004 began working full time as a supportive community living counselor. Her last day of work was October 7, 2004. She voluntarily quit effective October 11, 2004.

On September 28, the claimant became upset, at least triggered by an inquiry Ms. Bowers, the program coordinator, had made of her for her contact hours documentation that had been due on September 27. The claimant felt that Ms. Bowers was demeaning her, and the claimant was struggling with finding time to complete both the paperwork and the necessary client contact work. On September 28 the situation stressed the claimant to the point where she felt she could not continue working that day. She contacted her immediate supervisor, Ms. Hamann, who met with the claimant and successfully calmed her down to the point where the claimant agreed to continue working at a different location that the location Ms. Bowers worked. Ms. Hamann also worked through with the claimant suggestions as to how she could better manage her time so that she would not have such a conflict for time.

Upon returning to her office, Ms. Hamann informed Ms. Bowers about how upset the claimant had been and some of the statement the claimant had made about Ms. Bowers response to her. As a result, Ms. Bowers called the claimant and Ms. Hamann in for a meeting on September 29, 2004. During that meeting, the claimant attempted to explain how she felt about Ms. Bowers' approach to her. Ms. Bowers raised further concerns regarding the claimant's lack of concern for error made in her paperwork. At one point during the meeting, the claimant suggested she should just give her 30-day resignation notice; however, Ms. Bowers and Ms. Hamann demurred, and told the claimant she should consider her options and that they would talk again the following week.

The claimant continued working the rest of that week, and worked October 4, 6, and 7. She called in sick on October 5 and October 8. On October 7 a meeting was held with the claimant, Ms. Hamann, Ms. Bowers, and Mr. Bowers, the executive director. During the discussion, Mr. Bowers informed the claimant that he had determined that she would be returned to the case aide position effective October 11, 2004. The claimant's rate of pay would drop from \$10.82 to \$10.30 per hour. The change would have been for a minimum of three months. There was no discussion regarding whether the position would remain full time, or whether it would return to part time hours. The employer indicated at the hearing that it intended the position to be full time; while the claimant had assumed it would be part time, as there had not been any full time case aides, she acknowledged that the difference between the position being full time as compared to part time would not have affected her decision. However, the case aide position did not involve any of the client contact work that the claimant enjoyed. At the close of the meeting on October 7, the claimant inquired whether her only options were to accept the demotion or leave, and Mr. Bowers concurred. Mr. Bowers instructed the claimant to get back with him and let him know of her intentions. On October 11, the claimant called

Mr. Bowers. She again inquired whether her only options were to accept the demotion or leave. He again confirmed this; she then informed him that she had decided not to accept the demotion and would be leaving.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit for good cause attributable to the employer.

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.

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. The claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did have the option to continue her employment; her choice was not to either quit or be discharged, it was to either quit or continue employment in the demoted position. 871 IAC 24.26(21). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

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.

"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). A "contract of hire" is merely the most recent terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist, nor is it pertinent that the claimant remained an "at will" employee. While the employer had good cause for altering the claimant's position, if the change was substantial, the claimant could still have "good cause" for declining the change and quitting. It is not relevant that the claimant did not pursue a grievance to the employer's board; the employer had not effectively communicated to the claimant any right to grieve an employee dispute to the board, and further, on October 7 and October 11 the claimant was told she had

no other option but to quit or accept the demotion. Here, the change in the claimant's rate of pay itself does not meet the criteria of "substantial" as identified in Dehmel, however, the overall change in the claimant's job responsibilities that was to have been implemented was a substantial change in the claimant's most recent terms of employment. Dehmel, supra. Benefits are allowed.

DECISION:

The representative's November 2, 2004 decision (reference 02) 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.

ld/tjc