

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA POLLARD
Claimant

APPEAL NO: 13A-UI-02912-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 02-03-13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 8, 2013, reference 02, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on May 10, 2013, and continued on May 15, 2013. The claimant participated in the hearing. Jon Hougen, Administrator; Cindy Hambly, DON; and Treve Lumsden, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNA for Care Initiatives from May 21, 2012 to February 6, 2013. The claimant was a first shift employee working from 6:00 a.m. to 2:00 p.m. On February 6, 2013, the employer needed a first shift CNA to stay past the end of her shift because it was going to be short staffed for a short period of time into second shift. The nurses determine which of the four CNAs will have to stay and because two of the four CNAs had to leave at 2:00 p.m., the claimant and CNA Dawn Mitchell's names were placed in a hat and a nurse drew from the hat, which was a common practice, and picked out the claimant's name. The claimant was extremely upset because she had to pick up her children at 3:00 p.m. and as a result there was a loud commotion at the nurses' station where this incident took place. DON Cindy Hambly was in a meeting in her office and heard the disturbance at the nurses' station. Her meeting ended shortly thereafter and she called over the intercom for all CNAs present to come to her office for a meeting about not having loud arguments at the nurses' station where patients and families could hear. Neither the claimant nor Ms. Mitchell showed up for the meeting and when Ms. Hambly went to look for them she found both of them in Administrator Jon Hougen's office. She told them there was a CNA meeting going on and instructed them to come to her office for the meeting but both refused. Ms. Hambly and Ms. Mitchell had a loud, profanity laced, argument about CNAs having to stay past the end of their shifts. While in Mr. Hougen's office, both the claimant and Ms. Mitchell demanded that their employment be

terminated and said they were quitting their jobs. Ms. Hambly left Mr. Hougen's office after a few minutes and the claimant stated she wanted to be discharged. Ms. Mitchell said she was quitting. Both were leaving because they were upset about having to stay over and that their names were the two out of four CNAs put in the hat. Mr. Hougen was taken aback as he had never faced that situation before, and asked the claimant what he should list as the reason for termination. The claimant had attendance issues and he suggested that be used as the separation reason and the claimant agreed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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.

While the claimant maintains her employment was terminated by Ms. Hambly for no disqualifying reason, the administrative law judge finds the claimant voluntarily quit her job when she told the employer she wanted to be discharged from her employment and the employer complied with her request. A claimant who confronts his employer with a demand that he be discharged and is discharged actually quits his employment. Job insurance benefits "are not determinable by the course of semantic gymnastics." Frances v. IDJS, (Unpublished, Iowa App. 1986). The remaining issue is whether the claimant voluntarily left her employment for good cause attributable to the employer.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2.

The claimant was upset about having her name drawn to stay past the end of her shift because the employer must have a certain number of employees, depending on the number of residents, in accordance with state law. While the claimant's concern about how the nurses determined who had to stay was reasonable, her actions following that decision were not. She walked into Mr. Hougen's office, when Ms. Mitchell was already there complaining to him about the situation, and said she was quitting several times and demanded that her employment be terminated. Ms. Hambly witnessed part of that conversation and although the claimant testified Ms. Hambly terminated her employment, both Mr. Hougen and Ms. Hambly credibly denied that she did not do so. Additionally, the fact that Ms. Hambly did not have the authority to discharge any employee makes their testimony more persuasive. The employer understands there are times employees cannot stay past the scheduled end of their shifts and employees do not receive a written warning and are not discharged if they are unable to stay. The employer had no intention of terminating the claimant's employment for not staying over, or for any other reason at that time. Ms. Hambly does not get involved in staffing situations unless there is a conflict but neither the claimant nor Ms. Mitchell went to Ms. Hambly to discuss the matter

before going to Mr. Hougen's office. The claimant's distress at being selected to work past the end of her shift, or how that decision was made, does not constitute a good cause reason attributable to the employer for her decision to voluntarily quit her job by telling the employer she wanted to be terminated. Consequently, benefits are denied.

DECISION:

The March 8, 2013, reference 02, decision is affirmed. The claimant voluntarily left her 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs