

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODI E WALKER**  
Claimant

**APPEAL NO. 08A-UI-07747-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**  
Employer

**OC: 07/20/08 R: 01  
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 18, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on September 15, 2008. Claimant participated. Employer participated through Vicki Broussard and was represented by Gary Sander of Unemployment Services LLC. Doris Sanders was listed as a witness and the administrative law judge was asked to call her at home since she was ill but still intended to participate from that location. Sanders was not available when called during the 8:30 a.m. hearing and as of 10:15 a.m. had not responded to the administrative law judge's voice mail message.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time hotel front end clerk on July 10, 2007 until July 19, 2008, when she claimant quit the employment. She was promoted to front desk lead worker and then to front desk supervisor. Her granddaughter was born with medical issues on July 13 and she took a few days off. During that absence, her supervisor, Doris Sanders, became upset she was not available by cell phone in the hospital and that she could not fill in for others' shifts at the last minute. Sanders told her that her days off would change effective July 22 from Thursday and Friday to Tuesday and Wednesday and told her to choose between her family and her job. Employer knew when she was hired that claimant had other obligations on Thursdays and Fridays and could not work.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with good cause attributable to the employer.

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.

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.

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 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. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Since the alteration in days off contrary to the terms agreed to at hire appear to have been triggered while she was taking time off because of her granddaughter's medical issues at birth, the change in contract of hire appears to have been retaliatory, and claimant's decision to leave was with good cause attributable to the employer. Benefits are allowed.

**DECISION:**

The August 18, 2008, reference 01, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw