

**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**

**LAURA PATTERSON
601 N 12TH ST
GUTHRIE CENTER IA 50115-1512**

**THE NEW HOMESTEAD
2306 STATE ST
GUTHRIE CENTER IA 50115**

**Appeal Number: 06A-UI-06166-ET
OC: 05-14-06 R: 02
Claimant: Respondent (1)**

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.

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed from the June 2, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 6, 2006. The claimant participated in the hearing. Meradith Janssen, Administrator; Amy Gettler, Director of Nursing; and Merle Ann Steensen, Business Office Manager, participated in the hearing on behalf of the employer with Attorney Tara Hall.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the employer's last known address of record on June 2, 2006. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 12, 2006. The employer found the decision on the business office manager's desk June 15, 2006. It had been checking the mail for the decision but did not see it come through and does not know how it ended up on the business office manager's desk. The employer filed the appeal the day it received the decision. Consequently, the administrative law judge concludes the employer's appeal is timely.

The claimant was employed as a full-time charge nurse for The New Homestead from November 3, 1983 to April 26, 2006. She worked the 10:00 p.m. to 6:30 a.m. shift the past four years. On April 24, 2006, the employer notified the claimant it was moving her to the 2:00 p.m. to 10:30 p.m. shift because it was unhappy with her work performance. The employer testified to several deficiencies in the claimant's performance but had not issued any warnings to the claimant about her performance and the claimant was not aware of the employer's dissatisfaction prior to the meeting regarding her hours. After the employer told the claimant of the change in hours the claimant provided a doctor's note stating it would be better for the claimant to work the night shift due to her "medical history." The claimant has a foot condition and felt the night shift was somewhat easier because there was "less running." The employer told her it would not compromise on the change of hours and consequently the claimant voluntarily left her position with the employer April 26, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with 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.

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.

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 dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). 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 worked the night shift for the last four years before the employer told her it was moving her to the PM shift due to her work performance. Although the employer was dissatisfied with the claimant's work performance it did not warn her about her performance or tell her that if her performance did not improve she would be moved to the PM shift. Because the claimant had worked the night shift for four years and was not warned about her work performance, the administrative law judge finds that moving her to the PM shift constitutes a substantial change in the contract of hire, as that term is construed by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 2, 2006, 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.

je/pjs