

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE J MELIDIS
Claimant

APPEAL NO: 09A-UI-15873-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUTTER'S LOFT INC
Employer

OC: 09/20/09
Claimant: Respondent (3)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(38) – Resignation/Discharge
871 IAC 24.26(1) – Job Change

STATEMENT OF THE CASE:

The employer appealed a department decision dated October 13, 2009, reference 01, that held the claimant voluntarily quit with good cause on September 25, 2009, and benefits are allowed. A telephone hearing was held on November 24, 2009. The claimant participated. William Keck, President, participated for the employer. Exhibit A was received as evidence.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a part-time skin care specialist from March 10, 2008 to September 25, 2009. The claimant gave two-week notice on September 25 that she was resigning from employment, and the employer elected to discharge the claimant rather than allow her to work to the notice date of October 9.

The employer hired the claimant knowing that she lived in Clinton and the business is located in Davenport. The claimant worked a set schedule of days and hours that included her working from 8:00 a.m. to 2:00 p.m. on Fridays, so she could pick up her daughter from high school in Clinton. When the salon manager learned that two employees had called in sick on September 25 (Friday), she asked claimant if she could stay late and cover their appointments. The claimant declined, because she was picking up her daughter that day. Later that day, President Keck called the claimant into a meeting and stated the employer needed her stay, and she needed to have an alternate plan. Although Keck conceded that claimant could leave, he said "I'm going to teach you a lesson; if this happens again, you won't be here."

Leading up to this day, the claimant had been challenged by Keck about re-booking her clients, and her inability to attract local customers due to living in another community. Knowing that the

distance from home to work would continue to be a job conflict given that she was told a further issue could mean her job, the claimant tendered her resignation that day.

REASONING AND CONCLUSIONS OF LAW:

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 24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

871 IAC 24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

The administrative law judge concludes that the claimant voluntarily quit employment with good cause attributable to the employer effective October 9, 2009 due to a job change. Since the employer discharged the claimant on September 25 when she submitted her two-week notice, she is eligible for benefits to the proposed resignation date. The claimant is eligible for benefits effective October 11, 2009 due to her quit with good cause.

The claimant's contract for hire contained a set schedule of hours and days of work in recognition of where she lived, and the commute to her job. The employer changed that contract on September 25 when it added a condition that the claimant would have to have an alternate plan to cover for other employees regardless of her work schedule or face termination from employment. Since the employer discharged the claimant that denied her the opportunity to work the two-week notice period, she is entitled to benefits for that period (September 25 to October 10). In addition, the claimant is allowed benefits on and after October 11, 2009 for quitting with good cause due to the job change.

DECISION:

The department decision dated October 13, 2009, reference 01 is modified adversely to the employer. The claimant voluntarily quit with good cause attributable to the employer effective October 11, 2009, but she was discharged on her two-week notice date of September 25 that entitles her to receive benefits for that period. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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