

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACY L CRAVEN
Claimant

USPS
Employer

APPEAL 17A-UI-03606-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/27/16
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 28, 2017 (reference 13) unemployment insurance decision that held claimant ineligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 26, 2017. Claimant, Stacy L. Craven, participated personally. Employer, USPS, did not participate. Claimant's Exhibit A was admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a mail handler. She began her employment on January 30, 2017 and was separated from employment on March 3, 2017, when she voluntarily quit. Todd Oxley was the postmaster who hired the claimant. At the time of hire claimant was told that she would be working six days per week and she would start working at 3:00 a.m. and would work until 10:00 a.m. Claimant was told at the time of hire that she would not work past 10:00 a.m. and in fact, on occasion would work less than seven hours per day.

During the course of claimant's employment there was never a day when she was able to leave work at or before 10:00 a.m. Claimant was consistently working until 12:30 p.m. or later. Claimant confronted her supervisor, Kim Meiman, about this issue but nothing changed. Claimant reported to both Mr. Meiman and Mr. Oxley that she could not continue working past 10:00 a.m. as it was interfering with her other family responsibilities. Claimant tendered her resignation and her last day worked for this employer was March 3, 2017.

During the course of her employment, claimant developed medical issues with her arms and wrists. See Exhibit A. These medical issues were due to claimant's job duties involving her

heavy lifting and sorting of mail. Claimant visited with her doctor about these issues on March 6, 2017, after she had already voluntarily quit her position. Her voluntarily quitting her employment was not due to her doctor's recommendation to quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer. Claimant voluntarily quit her employment for two reasons: (1) a change in the contract of hire and (2) her inability to complete her job duties due to a work-related injury.

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.

Iowa Admin. Code r. 871-24.26(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 substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions.

However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added 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 concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 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. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Although claimant was not required by law to give the employer notice of her intent to quit regarding the change to the terms of hire, those changes must be substantial in order to allow benefits. In this case, the claimant was hired to work on a part-time basis and was told when she was hired that she would end her shift at 10:00 a.m. or before each day. During the entire course of her employment she was required to work at least 2 ½ hours more each day past her

10:00 a.m. shift end time. This change to the original terms of hire is substantial. Thus, the separation was with good cause attributable to the employer. Benefits are allowed on this basis.

Claimant also testified that she voluntarily quit her position due to the health-related issues she was having from the physical aspects of her job duties. In order for a claimant to be eligible for benefits due to a voluntary quit because of a work-related injury the claimant must have been advised to do so by her treating physician, which was not the case in this matter.

Iowa Code § 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Claimant has established that the medical condition with her arm, wrist and hand was work related; however, she must meet the requirements of the administrative rule cited above. In this

case, claimant was not advised by her doctor to quit work as the problem was not reviewed by a doctor until after she had already voluntarily quit. As such, she did not meet her burden of proof on this basis. However, benefits have already been allowed due to a change in the contract of hire as discussed above.

DECISION:

The March 28, 2017 (reference 13) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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