

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M WITHERS

Claimant

APPEAL NO. 10A-EUCU-00064-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXCEPTIONAL OPPORTUNITIES INC

Employer

OC: 02/01/09

Claimant: Appellant (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Susan Withers, filed an appeal from a decision dated January 25, 2010, reference 04. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 11, 2010. The claimant participated on her own behalf. The employer, Exceptional Opportunities, participated by Executive Director, Head of Food Service Janice Schneider and Director of Quality Assurance Erin Schmidt.

ISSUE:

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

FINDINGS OF FACT:

Susan Withers was employed by Exceptional Opportunities from August 5 until November 16, 2009 as a part-time cook. She worked three days a week from 3:00 p.m. to 7:00 p.m. and averaged around 24 hours per week.

On October 23, 2009, Executive Director Jean Menning and Head of Food Service Janice Schneider met with some of the cooks to discuss some possible changes. The employer had been having problems getting enough cooks and, in addition, the Iowa Department of Inspections and Appeals wanted the clientele more involved with preparing their own meals. The employer did not know what changes would be made or when they would be implemented, but it was likely the cooks on the 3:00 p.m. to 7:00 p.m. shifts would no longer be needed. Ms. Withers told Ms. Schneider it was “not worth [her] while to drive so far for only three of four hours every weekend.

On October 26, 2009, Ms. Schneider and Ms. Menning met with the claimant to discuss some options. A new weekend work shift was being contemplated where the cooks would work 11 or 12 hours shifts two days in a row and be paid \$2.00 per hour more. The claimant said she thought that would work out well with her class schedule and it would avoid her having to commute to work so often.

On November 6, 2009, the claimant sent an e-mail resignation to Director of Quality Assurance Erin Schmidt. She was not sure the change would be in her best interests, although no changes had yet been decided upon or implemented. Ms. Withers was concerned she might not get the opportunity to work the weekend shifts because she was the cook with the least seniority and might be "bumped" in favor of a more senior person. She was also frustrated the employer had not given her any firm dates when the changes would be made but that was because the employer was still in the process of deciding on what changes needed to be made and the best time to implement them.

Ms. Withers accepted a job from Titonka Care Center on November 9, 2009, but did not start until December 2009. She has received unemployment benefits since filing an additional claim with an effective date of August 16, 2009.

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.

The claimant quit because she was afraid she might not be able to work the weekend shift when the employer implemented the changes. There is no evidence that this would have occurred and the claimant made no effort to meet with her supervisor and the executive director to discuss her concerns and get reassurance on these points. Speculating about future events which might not be to her satisfaction does not constitute good cause attributable to the employer.

Ms. Withers submitted her resignation before she had been offered another job. In addition, she quit one month prior to assuming her job duties at the subsequent employer means she has not met the requirements of 96.5(1)a. She did not quit solely to accept new employment and immediately perform duties for that new employer. She could have continued working for at least two more weeks for Exceptional Opportunities which she chose not to do.

DECISION:

The representative's decision of January 25, 2010, reference 04, is affirmed. Susan Withers is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css