

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

SHARON S SCANLAN
1528 AVE F
FORT MADISON IA 52627

ADVANCED HOME HEALTH CARE LTD
1525 MT PLEASANT ST
BURLINGTON IA 52601

Appeal Number: 05A-UI-08545-DWT
OC: 07/17/05 R: 04
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 Quit

STATEMENT OF THE CASE:

Advanced Home Health Care Ltd. (employer) appealed a representative's August 11, 2005 decision (reference 01) that concluded Sharon S. Scanlan (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 9, 2005. The claimant participated in the hearing. Barb Nelson, the administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on January 20, 2003. The employer hired the claimant to work on an as-needed basis. From January 20, 2003 through March 2005, the claimant worked an average of 20 to 30 hours a week as a companion/homemaker. From April 1, 2004 through March 31, 2005, the claimant earned gross wages of \$1,200.00 to \$1,900.00 every three months. From April 1 through June 30, the claimant earned gross wages of only \$230.00.

When the claimant started working, she had specific clients that needed her services. As these clients became older their need for more skilled care increased. Employees who had more skills were then assigned and replaced the claimant. As the claimant lost clients, the employer did not have any new clients to assign to her. Since about March 2005, the claimant worked an average of only four hours a week. The claimant asked the scheduler and the nurse for more hours. They each told her the employer did not have work to assign to her.

On July 6, 2005, the claimant informed the employer she was quitting. The claimant quit because the employer reduced the number of hours she worked, when she worked she primarily ran errands, which cost her money to buy gas, and the claimant did not believe it was fair that one employee who had the same job as the claimant was scheduled to work for a client that the claimant could have worked for. The claimant did not know the client's family specifically asked for the other employee.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant voluntarily quit her employment on July 6, 2005. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

If the claimant had continued her employment and filed for partial benefits, she would have been eligible to receive partial benefits because she was working a reduced workweek. 871 IAC 24.23(26). If a claimant is eligible to receive partial benefits, it would be absurd to disqualify the claimant for quitting a job when her hours have been substantially reduced. The law presumes a claimant has voluntarily quit employment with good cause when she quits because of a substantial change in the employment relationship. 871 IAC 24.26(1).

Even though the employer did not guarantee the claimant a certain number of hours, for over a year the claimant worked an average of 20 to 30 hours a week. Although the employer was not at fault in the reduction of the claimant's hours, the reduction was a substantial change in the hours the claimant worked.

In Wiese v. Iowa Department of Job Service, 389 N.W.2d 676 (Iowa 1986), the Iowa Supreme Court stated: "We believe that a good faith effort by an employer to continue to provide

employment for his employees may be considered in examining whether contract changes are substantial and whether such changes are the cause of an employee quit attributable to the employer.”

In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in hours was, as a matter of law, a substantial change in the contract of hire. Further, while citing Wiese with approval, the Court stated that:

It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer.... [G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith.

(Id. at 702.) Dehmel, the more recent case, is directly on point with this case. Therefore, the fact the reduction in hours may have been due to circumstances beyond the employer’s control, under the reasoning of Dehmel, is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer. The claimant’s hours were reduced over 70 percent, which as a matter of law is a substantial change in the employment. The evidence established the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits.

DECISION:

The representative’s August 11, 2005 decision (reference 01) is affirmed. The claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. As of July 17, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer’s account may be charged for benefits paid to the claimant.

dlw/tjc