

**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**

**CATHY A JENSEN
813 HICKORY ST
WATERLOO IA 50701**

**HEARTLAND EMPLOYMENT
SERVICES LLC
c/o ADP UNEMPLOYMENT GROUP
THE FRICK COMPANY
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 05A-UI-05655-RT
OC: 05-08-05 R: 01
Claimant: Appellant (2)**

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 Quitting

STATEMENT OF THE CASE:

The claimant, Cathy A. Jensen, filed a timely appeal from an unemployment insurance decision dated May 23, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on June 15, 2005, with the claimant participating. Wendy Ager, Administrative Director of Nursing Services, and Shannon Mays, Licensed Practical Nurse (LPN), participated in the hearing for the employer, Heartland Employment Services, LLC. The employer was represented by Robin Hovanasian of ADP Unemployment Group, The Frick Company. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One and Two, the administrative law judge finds: The claimant was employed by the employer as a full-time certified nurse's aide (CNA) and certified medication aide (CMA) from March 19, 2003 until she voluntarily quit on April 27 or 28, 2005. The claimant quit because she was being moved from the Arcadia unit dealing only with Alzheimer's patients to a rotation between four units. Since the claimant's hire on March 19, 2003, the claimant had always been employed in the Arcadia unit. Further, the claimant's duties were both as a CNA and CMA, paying claimant an additional \$.75 per hour. On or about April 25, 2005, the claimant learned officially that she was going to be transferred from the Arcadia unit and that the transfer would also result in a reduction of pay in the amount of \$.75 per hour because she would no longer be acting as a CMA. The claimant voiced concerns to Shelly of Human Resources who informed the claimant of the transfer on April 25, 2005 and further told her that if this transfer was required, she would have to quit. The claimant did not want to move from the Arcadia unit because she was familiar with the patients there, was aware of what was required, and was making \$.75 per hour more.

On April 26 or 27, 2005, the claimant spoke to the employer's witness, Wendy Ager, Administrative Director of Nursing Services, and expressed some concerns about the transfer or move but at that time may not have mentioned the pay and the claimant did not at that time say she would quit. A meeting was arranged for the next day, April 27 or 28, 2005. At that meeting the claimant again expressed concerns about the move and indicated that if the move was required, she would have to quit. The move was required and the claimant quit by making an oral resignation at that meeting. At that time the claimant did not mention pay. When the claimant was first hired she was placed in the Arcadia unit. Over time, the employees in the other units were getting tired of the "heavy" care of patients in the other areas and a decision was made to rotate all employees between four units. The claimant was then informed that she would be rotating on or about April 25, 2005 and informed of the reduction in pay and this is what resulted in the claimant's quit. The employer has proceedings to file complaints but the claimant did not utilize those. However, the claimant did express concerns about the move to Shelly of Human Resources and to Ms. Ager and also indicated to each an intention to quit if the transfer or change was implemented.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not.

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.

The parties agree, and the administrative law judge concludes, that the claimant left her employment voluntarily. The parties disagree as to the date. The claimant maintains she voluntarily left her employment on April 27, 2005. The employer maintains that the claimant left her employment voluntarily on April 28, 2005. The administrative law judge concludes that it really makes no difference here what day the claimant left her employment because she did not file for unemployment insurance benefits until an effective date of May 8, 2005. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on April 27 or 28, 2005. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant testified that she left her employment with the employer because after working in the Arcadia unit for two years she was facing an imminent transfer to a rotation between four units and a pay reduction of \$.75 per hour. The employer's witnesses seem to maintain that the claimant quit for other reasons but they concede that the claimant was going to be moved from the Arcadia unit to a rotation of four units and further concede that the claimant was facing a pay reduction of \$.75 per hour. The claimant testified that when she first learned of this transfer officially she told Shelly of Human Resources of her concerns and indicated to her she would have to quit if her concerns were not addressed and told Shelly at the time it was because of the pay and because she did not want to leave the Arcadia unit because she was familiar with the patients and the job requirements there. The claimant also expressed concerns by telephone to the employer's witness, Wendy Ager, Administrative Director of Nursing Services, but the claimant did not specifically indicate a concern about her pay nor did she threaten to quit. At a meeting on April 27 to 28, 2005, when the claimant did quit, the claimant did express concerns about the move and indicated if the move was required, she would have to quit. She was informed that the move was going to be required and the claimant quit. It may be that the claimant did not mention pay as a motivating factor at that time.

The administrative law judge concludes that the claimant was motivated to voluntarily leave her employment because of the reduction in pay and because of the transfer from the Arcadia unit where she was familiar with her job functions. The administrative law judge further concludes that this change or transfer from the Arcadia unit to a rotation and reduction in pay were willful breaches by the employer of the claimant's contract of hire. The administrative law judge concludes that the breach was substantial involving remuneration and location of employment

and modification and type of work. The administrative law judge notes that throughout the claimant's employment with the employer she was assigned at the Arcadia unit with a \$.75 per hour extra pay for being a CMA. Because of this, the administrative law judge concludes that the claimant reasonably could expect her contract with the employer to include such an assignment and such pay. The administrative law judge also notes that the employer did not, at the time the claimant was hired, decide to have this rotation and just did not get around to rotating the claimant. The determination to make a rotation was made long after the claimant had been employed because employees in other areas were tired of "heavy care" patients. The administrative law judge notes that this was a change that the employer decided to make after the claimant had been hired. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily because of a substantial breach in her contract of hire by the employer, which breach was substantial.

The employer's witnesses seem to make much of the fact that the claimant did not utilize the employer's complaint processes. However, the employer's witnesses conceded that the employer would not have changed its mind about the transfer had the claimant done so. The administrative law judge concludes that the claimant did all she was required to do under unemployment insurance benefit rules when she expressed concerns to several individuals and indicated or announced an intention to quit if her concerns were not addressed. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily with good cause attributable to the employer and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

DECISION:

The representative's decision of May 23, 2005, reference 01, is reversed. The claimant, Cathy A. Jensen, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she left her employment voluntarily with good cause attributable to the employer.

pjs/pjs