

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE J WESSEL**  
Claimant

**APPEAL NO. 11A-UI-11075-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEALTHY CONNECTIONS INC**  
Employer

**OC: 07/24/11  
Claimant: Respondent (4R)**

Section 96.5-1 – Voluntary  
Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated August 17, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on Ottumwa, Iowa on November 8, 2011. Claimant participated personally. The employer participated by Ms. Rachael Owens, Assistant Executive Director. Exhibits One and Two were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Michelle Wessel was employed by Healthy Connections Inc. as a full-time community living support person from December 1, 2010 until July 26, 2011. Ms. Wessel was paid by the hour. Her immediate supervisor was Tammy Hichcocks.

On July 25, 2011, Ms. Wessel provided the employer her two-week notice of quitting employment to be effective August 8, 2011. The claimant was generally dissatisfied with the nature of the working environment which required the claimant to work with mentally challenged males in a home setting. Ms. Wessel disagreed with company rules that allowed the individuals being cared for the ability to talk back to care providers and at times to engage in disdainful personal activities. Ms. Wessel was also dissatisfied as supervisory personnel could not be reached via telephone at times during evenings or weekends. The claimant tendered her two-week notice of leaving approximately one week after receiving the August 2, 2011 schedule that had her working the evening shift on approximately three occasions. At the time of hire the claimant was informed that she would be required to work shifts other than the day shift occasionally.

After receiving the claimant's two-week notice of intention to leave, the employer elected to end the employment relationship the following day on July 26, 2011 and to give the claimant's working hours to other employees who desired more hours of work. The claimant was not paid through the notice period by her employer.

**REASONING AND CONCLUSIONS OF LAW:**

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.

In this case the evidence establishes that the employer chose to discharge the claimant prior to the proposed date of resignation. As no misconduct has been established the claimant is eligible for unemployment insurance benefits from July 26, 2011 through August 8, 2011, the proposed date of resignation.

The next question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. She did 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 24.25(21) and (23) provide:

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:

(21) The claimant left because of dissatisfaction with the work environment.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. An individual who leaves their employment must first give notice to the employer of their reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

In this matter Ms. Wessel understood the nature of the work that she was accepting with Healthy Connections Inc. and was aware that she would be working with mentally challenged males in a home setting. The claimant knew or should have known that the individuals that she worked with would not always be compliant and that at times certain portions of her job might be disdainful. Living support workers are given initial training by the organization and are provided a reasonable latitude to make daily decisions while working with the individuals that are being supported. While the claimant may not have been able to reach supervisory personnel by phone at certain times during the evenings or weekend, the claimant did have the latitude to make some decisions on her own and was free to summon outside assistance if the situation warranted.

Ms. Wessel was informed at the time of hire that she might occasionally be required to work shifts other than her preferred day shift and the claimant routinely did so while employed. Ms. Wessel left her employment after receiving her August 2011 schedule that had the claimant working evening hours on three occasions during the month. The evidence does not establish that the claimant's working hours were being reduced as the remainder of the final week of the schedule had not been posted because it had gone into the next month.

In this matter the employer was not aware that Ms. Wessel was considering leaving employment until she tendered her resignation. The claimant had the ability to go up the chain of command if she felt that her supervisor was not adequately addressing her needs. The claimant, however, did not do so.

The question before the administrative law judge is not whether Ms. Wessel had personal good cause reasons for leaving but whether they were good cause reasons attributable to the employer. For the above-stated reasons, the administrative law judge concludes that the claimant has not met her burden of proof in establishing good cause attributable to the employer. Unemployment insurance benefits are withheld effective the week of August 8, 2011 and until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's decision dated August 17, 2011, reference 01, is affirmed as modified. The claimant is eligible to receive unemployment insurance benefits from July 24, 2011 until the week beginning August 7, 2011. The claimant is disqualified thereafter until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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