

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIERA E COTTI
Claimant

APPEAL NO. 14A-UI-03271-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 03/02/14
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 20, 2014, (reference 02) unemployment insurance decision that denied benefits. After due notice was issued an in-person hearing was held on May 14, 2014 at Davenport, Iowa. The claimant did participate. The employer did participate though Monique Williams, Program Director. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct or did she voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a direct support professional beginning in February 2012 through February 18, 2014 when she voluntarily quit.

The claimant has been attending school since she began working for the employer. Up until January 2014 the employer had never changed the claimant's work schedule to accommodate her school or class schedule. No one on behalf of the employer ever promised the claimant that the employer would change her work schedule to accommodate her school schedule. The claimant did not work from October 22 through January 6 as she was off work on maternity leave. On December 30 the claimant met with Ms. Williams to talk about her work schedule when she returned to work. When she left work in October 2013 the claimant had been working third shift or overnights from 11:00 p.m. until 7:00 a.m. With a new baby the claimant did not want to work overnights any longer. The claimant was offered and accepted the work schedule found at Employer's Exhibit One, page one. She was to be to work at 3:00 p.m. each day she worked. The employer did not agree to let the claimant be an hour late to work on Tuesday to accommodate her school schedule. On Tuesdays the claimant was to pick up consumer M.Y. from her workplace at 3:00 p.m. The claimant was late to work on Tuesday, January 28, Sunday, February 1 and Tuesday, February 4, 2014. Ms. Williams, the claimant and Cheryll, (the claimant's direct supervisor) met on February 10 to discuss the claimant's attendance

problems on Tuesdays. The claimant was specifically told that she did not have permission to be late to work on every Tuesday she worked. The claimant was told that she was required to find someone to cover her shift and that employee would need to sign an agreement agreeing to cover the shift. The claimant was told that she had to meet the attendance requirements. The employer offered to let her go to an as needed status but did not ever agree to let the claimant be late to work on Tuesdays.

The claimant was over an hour late to work on Tuesday February 18. Cheryll had been called by consumer M.Y. at 3:30 p.m. who complained that the claimant was not there to pick her up for work. Cheryll told Ms. Williams what happened and went to pick up consumer M.Y. at work and to take her home. When the claimant arrived at work, Cheryll told her that she needed to talk to Ms. Williams and that her being late to work was unacceptable. The claimant was told to leave to talk to Ms. Williams. The claimant was never told she was discharged and the employer expected her to report back to work for her next work shifts. The employer was under no obligation to allow the claimant to be late to work to accommodate her school schedule. Cheryll did not treat the claimant any differently than any other employee.

The claimant filed a harassment complaint against Cheryll and simply stopped reporting for work. After she missed work for the next couple of weeks, the employer considered her to have voluntarily quit by abandoning her employment. The corporate human resources department investigated the claimant's complaints against Cheryll and determined they were unfounded.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

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. 871-24.25(18), (22), and (26) 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 § 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 § 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:

(18) The claimant left because of a dislike of the shift worked.

(22) The claimant left because of a personality conflict with the supervisor.

(26) The claimant left to go to school.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant was never given permission to be late to work every single Tuesday. She was specifically warned on February 10, that her failure to be on time would lead to consequences. She was late again. The claimant was then told to speak to Ms. Williams. No one ever told her not to report back to work. The claimant stopped reporting to work which under these circumstances amount to a job abandonment and a voluntary leaving of her employment. Requiring an employee show up for work on time, does not create a hostile or intolerable work environment. While claimant's decision to quit may have been based upon good personal reasons it was not a good-cause reason attributable to the employer for leaving the employment. Benefits are denied.

DECISION:

The March 20, 2014, (reference 02) decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css