

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M GOEDKEN

Claimant

APPEAL NO. 12A-UI-04122-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASSISTED LIVING CONCEPTS INC

Employer

OC: 03/11/12

Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed an appeal from the April 5, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on May 8, 2012. Claimant participated. Employer participated through regional director of operations, Ken Hines. Employer's Exhibit 1 was admitted to the record. Claimant's Exhibits A through Q were admitted to the record.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a residence director from October 17, 2011 and was separated from employment on March 12, 2012. She interviewed for the job with the previous regional director of operations, Jared, who wanted her to prioritize making certain improvements to the agency. Hines then came on as her supervisor and told her to focus on sales. The employer went through four dining services coordinators since she was hired. On her final day of work she arrived and was told the dining services coordinator was ill with the flu leaving breakfast to be cooked and served at 9:00 a.m. This conflicted with a scheduled 9:00 a.m. conference call every Monday morning. She told wellness director, Linda, about what she needed to know for the conference call meeting with Hines so she could finish and serve breakfast. Linda later told her Hines was "pissed" claimant was not on the call. Claimant left Hines a voice mail message and he did not return her call until later that day. She was also acting as sales manager and wellness director in addition to her regular job duties. Her 90-day performance review was not given to her until late February 2012 and extended her probationary period for another 90 days. She believed, given the circumstances of the staff turnover, unfulfilled supply orders, and pay complaints, she could not achieve the employer's goals and the company was setting her up to fail unless some changes were made and the company helped. She expressed her concerns to human resources director, Craig Boyes, who wanted her to sign the performance review without writing a response. She had concerns about the employer's integrity since it could not provide level of care resident paid for so the resident moved out and the employer wanted claimant

notify the resident and his family of charges for that level of care for an additional 30 days because of a notice deadline.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with 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.

871 IAC 24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

A notice of an intent to quit had been required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). Where claimant was required to work in two separate positions and received contradictory instructions from two different supervisors and quit after being reprimanded for his job performance was entitled to benefits. *McCunn v. EAB*, 451 N.W.2d 510 (Iowa App. 1989).

The additional job duties and expectations, coupled with the lack of support for those duties and issues, for which she was criticized in her performance review, created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The April 5, 2012 (reference 01) decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css