

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

SHELLY L DYKSTRA
4101 – 16TH AVE SW #31A
CEDAR RAPIDS IA 52404

ATLANTIC MANAGEMENT CORPORATION
36700 GRAND RIVER AVE
FARMINGTON HILLS MI 48335

Appeal Number: 04A-UI-08247-BT
OC: 07/04/04 R: 03
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:

Atlantic Management Corporation (employer) appealed an unemployment insurance decision dated July 28, 2004, reference 01, which held that Shelly Dykstra (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 20, 2004. The claimant participated in the hearing. The employer participated through Peter Wanger, General Counsel.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time general cleaner from July 9, 2001 through June 28, 2004 due to a change in the contract of hire. For approximately one month prior to her separation, the claimant had repeatedly advised the new manager she did not want to work grounds, which was yard work. On the day she quit, the employer was assigning the claimant to grounds permanently but the claimant refused and quit.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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 claimant voluntarily quit on June 28, 2004. She has the burden of proving that the voluntary quit was for a good reason that would not disqualify her. Iowa Code Section 96.6-2. The law presumes a claimant has left employment with good cause when she quits because of a change in the contract of hire. 871 IAC 24.26(1). In order to show good cause for leaving employment based on intolerable or detrimental working conditions, an employee is required to take the reasonable step of informing the employer about the conditions the employee believes are intolerable or detrimental and that she intends to quit unless the conditions are corrected. The employer must be allowed the chance to correct those conditions before the employee takes the drastic step of quitting employment. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). In her last month of employment, the claimant repeatedly voiced her opinion that she did not want to work grounds but the employer assigned her to grounds anyway. Inasmuch as the claimant gave the employer an opportunity to resolve her complaints prior to leaving employment and the employer was unwilling to accommodate her request, the separation was with good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated July 28, 2004, reference 01, is affirmed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

sdb/pjs