

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SARA VOIGHT**  
Claimant

**PRAIRIE MEADOWS RACETRACK  
CASINO**  
Employer

**APPEAL 21A-UI-16394-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/20**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(1) - Voluntary Quit  
Iowa Code § 96.5(2)a - Discharge for Misconduct  
Iowa Admin. Code r. 871-24.26(1) - Change in Contract for Hire

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 22, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on September 17, 2021. Claimant, Sara Voight participated and testified, as well as Dustin Jessip (co-worker/bartender) and Julie Johnson (claimant's mother). Employer participated through Pam Anderson (human resources, risk management and loss prevention) who testified. Administrative notice was taken of the file and the records therein.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, with a set schedule of Friday - Monday 4pm-2am (four, ten hour days) as a bartender with benefits. Claimant started work on June 29, 2016. Employer furloughed a number of employees due to closure from COVID-19 commencing March 17, 2020. Claimant's first day of being furloughed was March 16, 2020, after she finished her shift, which ended up being her last day worked. Claimant received pay during part of the furlough. Claimant's last paycheck was May 8, 2020, as employer continued paying those furloughed for a period of time. This paycheck covered the timeframe of April 18 - May 2, 2020.

Claimant was recalled from the furlough on August 10, 2020, when Steve Weirmann, manager, called claimant to advise that they are able to offer her part-time work as a bartender, with no set schedule, no guarantee of hours and there would be no benefits. Training would begin August 14, 2020 regarding new procedures with reopening under COVID-19. Claimant was hesitant to take the position as it was not full time, no benefits, no set schedule and no guarantee of any

hours. When claimant first started at employer, she had part-time, no set schedule, no guarantee of hours, no benefits and did not want to go back to this. Claimant inquired as to whether she could stay furloughed and they call her back when full time became available. Sherri Hansen was heard over the phone in the background that claimant had to take it or leave it. Claimant declined the offer. The reason for declining the offer was she would be losing her full time position, losing her set schedule, guaranteed forty hours a week and losing her benefits in exchange for part-time work, no set schedule, no benefits and no guarantee of hours, and having done this in the past, knew that the hours would be minimal, maybe ten hours per week. This would be a 75% reduction in pay and loss of benefits. On August 13, 2020, claimant e-mailed employer about decision to not accept the offer of the part-time position. Claimant followed employer's website for positions, finally seeing a full time cocktail waitress position in July of 2021, which she applied for but never heard anything from employer. Employer considers her separated from employment on August 13, 2020, when claimant sent the e-mail.

Bartenders were called back on the basis of their seniority and once the full time positions were filled, the employer called up three bartenders from furlough to offer them part-time spots. Claimant was one and Mr. Jessip, a co-worker of claimant and a fellow bartender, was another one. Mr. Jessip was full time when furloughed and he accepted the offer. Mr. Jessip did the training and the regular part-time bartending work started August 31, 2020. Mr. Jessip stayed with employer until middle of June, 2021, when he left to find employment with more regular hours. He estimates his average weekly part-time hours at 6½. He did not get less than four nor more than ten hours in any given week and in that time frame, a full time bartending spot did not open up and he needed more money and benefits.

#### **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 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.

Iowa Admin. Code r. 871-24.26(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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is

reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

Claimant chose to not accept the substantial changes in her employment as addressed above. Claimant's leaving was for good-cause reasons attributable to the employer, according to Iowa law.

**DECISION:**

The July 13, 2020, (reference 01) unemployment insurance decision is REVERSED. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Darrin T. Hamilton  
Administrative Law Judge

September 23, 2021  
Decision Dated and Mailed

dh/ol