

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA K MINIKUS
Claimant

APPEAL NO. 07A-UI-10126-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AREA EDUCATION AGENCY 267
Employer

OC: 09-16-07 R: 03
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(19 & 22) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 25, 2007, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on November 19, 2007. The claimant did participate. The employer did participate through Betty Beauregard, Benefits Specialist and Dennis Scudder, Director of Finance. Employer's Exhibit One was received. Department's Exhibit D-1 was received.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a kindergarten associate teacher full time beginning December 14, 2006 through December 15, 2006 when she voluntarily resigned because she did not like the position. Prior to beginning work the claimant and the school principal each agreed that they would have a trial period of employment and that if the claimant did not like the position she could leave and that if the principal did not think the claimant was suited to the position she could ask the claimant to leave. After working for two days, the claimant determined that the job was not suitable for her. With the permission from the principal she completed her trial period and ceased working.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was not disqualifying.

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(19) and (22) provide:

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:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code § 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code § 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code § 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

The claimant and the employer through the school principal agreed to a trial period of employment. The claimant completed the trial period. Inasmuch as the claimant completed the contract of hire with employer, no disqualification is imposed.

While the employer alleges at the hearing that the claimant was only hired as a substitute teacher, the claimant uncontroverted testimony that she and the school principal agreed to a trial period of employment is persuasive. Since the school principal agreed to a trial period, the claimant is considered to have completed her contract of hire. She had no reason to believe that she would be hired back at some later date by the school district. While the paperwork filled out by the principal may indicate the claimant was a substitute teacher, her verbal agreement with the claimant to a trial period of employment is controlling. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 25, 2007, reference 02, decision is affirmed. Claimant's separation from employment was for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css