

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KELLY N DE LONG**  
Claimant

**CEDAR RAPIDS COMMUNITY SCHOOL  
DISTRICT**  
Employer

**APPEAL 16A-UI-12884-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/30/16**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Kelly N. De Long (claimant) filed an appeal from the November 23, 2016 (reference 02) unemployment insurance decision that denied benefits based upon the determination her employment ended when Cedar Rapids Community School District (employer) accepted her resignation which is not a good cause reason attributable to the employer. The parties were properly notified about the hearing. A hearing was held in Cedar Rapids, Iowa at 10:00 a.m. on February 15, 2017. The claimant participated personally. Para Educator Mindy Pickney, Teacher Kaitlin Scott, and Tina Stec, MD participated on the claimant's behalf. The employer responded to the hearing notice, but declined to participate in the hearing. The hearing was observed by employer's Lead Human Resources Specialist Sue Wilber and Attorney Emily Ellingson. Claimant's Exhibits A through P and R through Z were admitted into the record.

**ISSUE:**

Did the claimant voluntarily quit the employment with 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 Para Educator beginning on January 19, 2016, and her last day worked was August 22, 2016.

Teacher Kaitlin Scott was one of the individuals who hired the claimant. During the interview, the claimant was told that the hours for the position required an employee to work until 3:30 p.m. The claimant notified Scott before accepting the position that would not work for her due to a lack of child care for her four children and asked if she could have her work day end at 2:30 p.m. The employer agreed to the altered hours and the claimant accepted the position.

In March 2016, a student came to school with scabies. The claimant contracted the disease and sought treatment. The situation reoccurred and the claimant reported it to the employer. On March 30, 2016, the claimant filed a complaint with OSHA regarding the situation in the

classroom. On April 1, 2016, the claimant was seen by Tina Stec, MD at the Unity Point Well Work Clinic as she felt she had a work-related injury. Stec left a voice message for Lead Human Resources Specialist Sue Wilber regarding a student reporting to school with scabies. When Wilber returned Stec's phone call, she berated Stec for encouraging the claimant to file an OSHA complaint.

On April 2, 2016, the claimant drafted a letter to be sent out to the parents of the students in her classroom regarding the student with scabies. Scott, the claimant's supervisor, did not agree with the letter, but allowed it to be sent home with the students' backpacks at the end of the day.

On April 5, 2016, Wilber and other management employees met with the claimant to discuss her OSHA complaint and the continuing issues in the classroom. The employer conducted an investigation into the situation with the claimant and the OSHA complaint. It received conflicting information as to what the claimant did as a result of the outbreak and whether the classroom staff was following proper procedures to prevent outbreaks of infectious diseases. On April 8, 2016, the employer filed a response to the OSHA which the claimant believed was false.

On April 22, 2016, the claimant received a written reprimand for dishonesty from Wilber, specifically related to the interview regarding the letter sent home and a statement she made about the principal. The claimant disagreed with the reprimand as she believed Wilber was being dishonest, had not accurately summarized the incidents that occurred, and had disregarded evidence and statements that were in the claimant's favor. As a result of the reprimand, the claimant's probationary period was extended and she was moved to another classroom which required her to work until 3:30 p.m. The claimant notified Wilber that she could arrange for daycare for her children through the end of the school year, but her assignment the following year needed to end at 2:30 p.m. as originally agreed.

The claimant contacted her union representative Kim Miller about the situation. Miller and the claimant met with Wilber's then supervisor Jill Cirivello. Cirivello did not let the claimant tell her everything she felt was wrong with the reprimand, but she did rip up the reprimand and stated it would be removed from the claimant's personnel file. The claimant also received her assignment the following school year. In her offer letter, she was told the school to which she would be assigned was farther away and she would be responsible for loading kids onto the school bus at the end of the day, which would necessitate her working until 3:30 p.m. The claimant finished out the school year.

On July 27, 2016, the claimant contacted Miller about her assignment for the following year. She explained that there were no positions available that allowed for her day to end at 2:30 p.m. On August 4, 2016, the claimant requested a meeting with Superintendent Bradley Buck to discuss the change in position for a reprimand that was ultimately removed from her file. On August 8, 2016, the claimant and Miller met with Buck to discuss the claimant's position among other things. Buck informed the claimant the following day that the reprimand was still in her file and had not been removed. The claimant continued to inquire about her status, but was not given any information about the hours for her new position. School started August 20, 2016 and she quit her employment August 22, 2016 due to the change in hours and the ongoing issues related to Wilber and the situation from April 2016.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed.

Iowa law disqualifies individuals who voluntarily quit without good cause attributable to the employer from receiving unemployment insurance benefits. Iowa Code § 96.5(1). The 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). If an individual quits due to a substantial change in the contract under which she was hired, she voluntarily quit her employment with good cause attributable to the employer. Iowa Admin. Code r. 871-24.26(1). A substantial change could involve, among other things, a change in working hours. *Id.*

The claimant specifically negotiated her work hours when she was hired due to child care issues. She notified the employer she was not able to work after 2:30 p.m. before accepting the position. The employer agreed to her work hours and she accepted the position contingent upon her ability to end her work day at 2:30 p.m. The employer changed the claimant’s hours at the end of the 2016 school year, but did not establish that the reason for the change was due to disqualifying misconduct. The reprimand given to the claimant was torn up and was supposed to be removed from her file in May 2016. The claimant’s change in hours without any underlying misconduct is considered substantial. Thus, the separation was with good cause attributable to the employer. Benefits are allowed.

**DECISION:**

The November 23, 2016 (reference 02) unemployment insurance decision is reversed. The claimant voluntarily quit the 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.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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