

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATTI L JOHNSON
Claimant

APPEAL NO. 11A-UI-06686-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REACH FOR YOUR POTENTIAL INC
Employer

**OC: 04/17/11
Claimant: Appellant (2)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Patti Johnson filed a timely appeal from the May 10, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 28, 2011. Ms. Johnson participated and was represented by attorney Crystal Raiber. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The administrative law judge notes that the employer also did not participate in the May 9, 2011 fact-finding interview. Exhibits A through E were received into evidence.

ISSUE:

Whether Ms. Johnson's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a social services agency that provides services to mentally and physically challenged individuals. Some of the clients have significant medical issues that require assistance from staff with special training or experience. Some clients receive services in their homes, whether that is a group home or other living arrangement, and some clients receive services at the employer's facility. Patti Johnson was employed by Reach for Your Potential as a full-time program assistant from November 2010 until March 22, 2011, when she voluntarily quit the employment.

Ms. Johnson had multiple supervisors and was assigned a variety of tasks. At the time of hire, the employer provided Ms. Johnson with a job description that listed essential job functions. During the employment, the employer had Ms. Johnson perform very few of the essential job functions listed in the job description. After Ms. Johnson had been in the employment for a week or two, the agency lost its receptionist. The employer then assigned Ms. Johnson to fulfill those duties. Though the essential job functions listed in the job description indicated that Ms. Johnson was to function as a "back-up and cover Receptionist's lunch hour," Ms. Johnson had not understood that to mean that she would be reassigned the receptionist's duties full-time for an extended period. After three days of being reassigned to the front desk, Ms. Johnson learned that the move was permanent until the employer got a new receptionist. Ms. Johnson

continued to perform the receptionist's duties from November until the end of January, when the employer hired a new receptionist.

At the end of Ms. Johnson's employment, the employer lost the service coordinator who ordinarily prepared the employee work schedule. The employer assigned Ms. Johnson to write the work schedule for two dozen employees who worked at several different facilities. Assisting with "the review of Direct Care staff work schedules" was one of the essential job functions included in the job description, as was assisting "with other duties as assigned by the Program Directors and the Executive Director." Ms. Johnson's supervisor gave her an outdated employee availability chart that Ms. Johnson was supposed to use to make the next schedule. The employees to be scheduled had varying skill sets. Some were designated as drivers, as medication passers, as g-tube trained, as insulin trained, whereas other lacked such training or skill. Some employees had been trained to some facilities, but not others. When the availability schedule was presented to Ms. Johnson, the supervisor told her it was like a puzzle that Ms. Johnson would have figure out.

As Ms. Johnson waded into the project, she quickly discovered that the outdated availability chart presented a significant impediment to preparing a new schedule. Ms. Johnson ended up having to contact most, if not all, of the two dozen employees to confirm their skill sets, the facilities for which they had been trained, and their hours of availability. Ms. Johnson became increasingly concerned about being assigned the scheduling duties without proper training and feared an error on her part could result in a client being endangered and/or not receiving appropriate care. Nonetheless, Ms. Johnson completed the assignment to the best of her ability, but not to the satisfaction of her employer or all of the employees she scheduled.

On March 18, Larisa Sheldon, human resource director, issued a written reprimand to Ms. Johnson for failing to complete the work schedule in a timely and accurate manner. The reprimand referenced that Ms. Johnson had received two hours of training and had been given two days to complete the schedule. The reprimand alleged that Ms. Johnson had been observed wandering around on the second day. Ms. Johnson had been looking for a telephone she could use to contact employees. The employer had failed to make a telephone readily available to Ms. Johnson and she had to "borrow" a telephone from other staff to make calls. The reprimand warned that if Ms. Johnson failed to complete job responsibilities in the future, she would be subject to further disciplinary action up to or including termination of the employment.

After Ms. Johnson received the reprimand, she concluded that she still did not have accurate information necessary to satisfactorily complete the schedule and lacked essential training to complete the work. Ms. Johnson was aware that the past service coordinators had received much more training before being assigned the scheduling duties. Ms. Johnson contacted Jessie Montgomery, program director, on March 22, 2011 and notified her of her decision to quit the employment. Ms. Johnson told Ms. Montgomery that she could not accomplish the tasks assigned to her and did not know how she could continue working with the concerns she had.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

On the other hand, if an employee quits due to dissatisfaction with the work environment or in response to a reprimand, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21) and (28).

The weight of the evidence establishes a voluntary quit on Tuesday, March 22, in response to the reprimand she received on March 18, 2011, regarding her failure to complete the work schedule in a timely and accurate manner. Because the quit was in response to a reprimand, this created the presumption that the quit was without good cause attributable to the employer. However, the reason Ms. Johnson did not complete the work schedule in a timely and accurate manner was because completing this work schedule was not part of her ordinary duties. It represented, instead, a substantial change in the conditions of her employment. The work schedule would ordinarily be prepared by someone with more experience and training. This was not the first time the employer had changed the conditions of Ms. Johnson's employment. The employer had changed the conditions of Ms. Johnson's employment during to the first week when the employer assigned Ms. Johnson to full-time receptionist duties for two months or more. While the nature of Ms. Johnson's position was to function as a back up or to assist where needed, the employer went well beyond this in assigning Ms. Johnson receptionist and scheduling duties.

The weight of the evidence also establishes that once the employer assigned Ms. Johnson to complete the schedule, the employer failed to provide her with ready access to the tools she needed to perform the work in a timely and accurate manner. The employer provided an outdated availability schedule. The employer unduly limited her access to a telephone. The employer added insult to injury by subsequently threatening to discharge Ms. Johnson from the employment if she failed in the future to meet similar unreasonable demands. The hurdles imposed by the employer, coupled with the change in duties and threat of discharge, were sufficient to create an intolerable work situation that would have prompted a reasonable person to leave the employment.

In this case, the employer's failure to participate in the fact-finding interview or the appeal hearing adds weight to Ms. Johnson's testimony.

Ms. Johnson voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Johnson is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Johnson.

DECISION:

The Agency representative's May 10, 2011, reference 01, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw