

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JENNIFER J GIUDICI**  
Claimant

**APPEAL 21A-UI-15324-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VERA FRENCH COMMUNITY MENTAL HEA**  
Employer

**OC: 03/22/20**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview  
PL 116-136 – Lost Wages Assistance Program

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 29, 2021, (reference 01) unemployment insurance decision that allowed benefits based upon claimant's voluntary quit with good cause. The parties were properly notified about the hearing. A telephone hearing was held on August 30, 2021. Claimant Jennifer J. Giudici participated and testified. Michael Giudici observed. Employer Vera French Community Mental Health participated through human resources director Shelly Chapman. Claimant's Exhibits A – I were admitted. Employer Exhibits 1 – 7 were admitted. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Is the claimant eligible for Lost Wages Assistance Program (LWA)?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a school-based therapist from January 4, 2016, and was separated from employment on August 5, 2021, when she quit.

Claimant's job duties included providing individual and family therapy to clients at an assigned school district, scheduling, and communicating with teachers and parents. Claimant's scheduled followed that of the school district to which she was assigned. She worked 7:30 a.m. to 4:30 p.m., and was off work during the summer and winter and spring breaks, for approximately six weeks. She worked less than 200 days each year.

On July 31, 2020, employer notified its school-based therapists by email that it was restructuring their position. (Claimant's Exhibit H, Employer's Exhibit 5) Beginning in the 2020-2021 school year, therapists would be required to conduct in-home visits twice a year for each of their clients and work one evening each week. For claimant, this would amount to up 80 home visits each year. Additionally, therapists would begin working during winter, spring, and summer breaks. They would begin accruing vacation time and would have to request time off and use their vacation leave for any time off from work. Changes were also being made to the incentive structure, although those changes were not described in the email.

Employer made these changes to align the school-based therapist positions more closely with its other therapist positions. Employees were given until August 5, 2020, to decide whether they wished to continue with their employment given the change to the position. Therapists were not given the opportunity to ask questions or discuss the changes with management prior to making their decision.

On August 5, 2020, claimant submitted her written resignation by email. (Claimant's Exhibit I, Employer's Exhibit 7) She resigned due to the restructuring of the position.

Claimant filed her initial claim for benefits effective March 22, 2020. The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,777.00, since her separation, for the six weeks ending September 12, 2020, and Lost Wages Assistance Program (LWA) benefits in the amount of \$1,800 for the six weeks ending September 5, 2020. Employer representative Shelly Chapman did participate in a cold call fact finding interview in June 2020.

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

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was 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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

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:

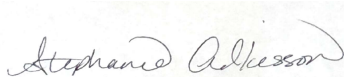
(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes 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.

In this case, claimant was hired on full time as school-based therapist. The position followed the schedule of the assigned school district, and provided for approximately six weeks off during winter and spring breaks and summer. No evening hours or home visits were required. Employer restructured the position to require additional work days during the year and removed the six weeks off each year. It added required evening hours each week, as well as in-home visits to clients. These were not minor changes, but were a drastic change in the scheduled hours and location without any discussion of additional compensation. Claimant has established the contract of hire had changed substantially, and has demonstrated good cause for quitting the employment. Benefits are allowed, provided claimant is otherwise eligible.

Because claimant's separation is not disqualifying, the issues of overpayment and repayment are moot. Because claimant is eligible for regular unemployment insurance benefits, claimant is also eligible for Lost Wages Assistance Program.

**DECISION:**

The June 29, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant quit with good cause attributable to the employer due to a change in contract of hire. Benefits are allowed, provided claimant is otherwise eligible. The issues of overpayment and repayment are moot. Claimant is eligible for Lost Wages Assistance Program to the extent she is eligible for unemployment insurance benefits.



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September 7, 2021  
Decision Dated and Mailed

sa/kmj