

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**DOROTHY M DUININK  
BOX 281  
MONTEZUMA IA 50171**

**GEORGIAN COURT OF OSKALOOSA LLC  
SIESTA PARK MANOR/TOWER PARK  
NURSING HOME  
1320 HIGH AVE W  
OSKALOOSA IA 52577**

**Appeal Number: 04A-UI-01124-B4T  
OC: 01-04-04 R: 02  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1- Voluntary Quit

STATEMENT OF THE CASE:

Dorothy M. Duinink appealed from an unemployment insurance decision dated January 29, 2004, reference 01, that held, in effect, the claimant voluntarily left her employment with Georgian Court of Oskaloosa LLC, operating Siesta Park Manor/Tower Park Nursing Home, on December 31, 2003 without good cause attributable to the employer.

A telephone conference hearing was scheduled and held on February 19, 2004. Dorothy M. Duinink participated. Laurie Garrard, Administrator, participated on behalf of the employer, hereinafter referred to as Georgian Court of Oskaloosa.

Official notice was taken of the decision under consideration dated January 29, 2004, reference 01, together with the pages attached thereto (10 pages in all).

**FINDINGS OF FACT:**

Dorothy M. Duinink was initially employed on August 19, 2001 as a certified medical aide at Tower Park Nursing Home, operated by Georgian Court of Oskaloosa LLC. At the time of her hire, the claimant made application for part-time weekend work only due to medical problems that she had prior to her employment with Georgian Court.

During the tenure of her employment, the claimant voluntarily became a full-time employee at Tower Park due to the shortage of certified medical aides and other personnel. Management at Georgian Court was making an effort to hire more employees but was unable to do so. The claimant voluntarily extended her work hours during the week and worked as a full-time certified medical aide during the fourth quarter of 2002 through the third quarter of 2003.

The claimant, at times, would request of various administrators that she be put back on weekend work only but during the second and third quarters of 2003, the claimant accepted other employment with an individual named John Namm to work on weekends in addition to the work she was performing for Georgian Court.

In November of 2003, the claimant made an effort to contact Laurie Garrard, Administrator, and eventually had a conversation in December on the telephone. The claimant then informed Laurie Garrard that she wanted to return to her part-time hours due to her medical problems or she would be leaving her employment.

The claimant then informed others that she was leaving her employment and did so on or about December 31, 2003. The claimant did not at any time provide statements from a licensed and practicing physician limiting her hours to part-time or for any other reason. The only medical information provided by the claimant was a letter from a licensed and practicing physician which was read into the record and obtained after the claimant's termination of employment.

**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.

871 IAC 24.25(27) provides:

- (27) The claimant left rather than perform the assigned work as instructed.

871 IAC 24.25(35) provides:

- (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;

- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

871 IAC 24.26(1), (6)a 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.

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The evidence in the record is clear that the claimant did not obtain the advice of a licensed and practicing physician and provide such information to the employer prior to leaving her employment. The claimant as yet has not fully recovered and cannot return to work. The claimant contended, in effect, that there was a substantial change in the nature of her contract of hire. The change in the claimant's contract of hire from part-time employment to full-time employment was made at the choice of the claimant. The claimant chose to work full-time for the employer irrespective of the medical problems that she allegedly had. In addition, the claimant obtained another job in the second and third quarters of 2003 which added to the work hours she was working on a full-time basis with Georgian Court. The change in the nature of the claimant's employment was made by the claimant alone. The claimant had the opportunity to schedule less hours had she chosen to do so.

In addition, the separation is a non-employment related separation because of illness. The claimant, however, did not provide any documentation to the employer at any time during her tenure of employment that would establish she was only to work on a part-time basis. The administrative law judge concludes that Dorothy M. Duinink voluntarily left her employment with Georgian Court of Oskaloosa LLC on or about December 31, 2003 without good cause attributable to the employer within the intent and meaning of Iowa Code Section 96.5-1.

DECISION:

The unemployment insurance decision dated January 29, 2004, reference 01, is affirmed. Dorothy M. Duinink voluntarily left her employment with Georgian Court of Oskaloosa LLC on December 31, 2003 without good cause attributable to the employer, and benefits are denied until such time as she has requalified under the provisions of the Iowa Employment Security Law.

tjc/b