

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

VERONICA MARTIN Claimant	68-0157 (9-06) - 3091078 - EI
GOOD SAMARITAN SOCIETY INC Employer	APPEAL NO. ADMINISTRATIVE LAW JUDGE DECISION
	OC: 09-10-06 R: 04 Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 5, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 6, 2006. The claimant participated in the hearing. Pam Lundgren, Human Resources Director and Susan Perkins, Housekeeping and Laundry Services Director, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time housekeeping assistant for Good Samaritan Society from June 25, 2002 to October 13, 2006. The employer's policy states that three written warnings will result in termination. The claimant received a written warning for absenteeism May 26, 2006, after accumulating four absences within three months and a final written warning May 26, 2006, for having an unexcused absence that day. On September 8, 2006, the claimant was asked to take down some curtains in a resident's room and wash and re-hang them. She became very angry about the request because she had done one curtain panel already and did not understand why the employer did not ask her to do it all at the same time. As she was walking down the hall, Susan Perkins, Housekeeping and Laundry Services Director, followed her and heard her say, "This is fucking shit." Ms. Perkins followed her into the storage room and the claimant's anger "escalated" and she would not let Ms. Perkins finish a sentence. Ms. Perkins was surprised by the claimant's behavior and did not want her around the residents so she sent her home around 10:30 a.m. On September 11, 2006, the claimant met with the employer and her employment was terminated for using profanity causing the third written warning. On October 11, 2006, the employer met with the claimant about reinstating her employment because it felt she was a good, long-term employee and the last incident involved one person's word against another. She was offered and accepted back pay for one month as payment for the time she was off because the employer's policy provides for back pay when

there is a reinstatement. The employer offered the claimant a position as a floating housekeeper and when she declined that position the employer offered her previous position and the claimant said she would think about it. The parties met again October 13, 2006, and the claimant received her back paycheck. The employer asked the claimant about accepting her old job and said it would work to try to reconcile the claimant's differences with Ms. Perkins. The claimant asked how she could know it would not happen again and the employer asked the claimant to trust them. The claimant declined to accept her previous job or a job as a dietary aide and submitted her resignation at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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.

While the claimant's employment was originally terminated, she was reinstated with back pay which effectively made the termination moot because she accepted the back pay and consequent reinstatement and then resigned. For that reason the administrative law judge concludes the claimant voluntarily left her position with the employer. 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 from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. In this case the claimant resigned rather than return to her previous position or accept either of the other two positions offered by the employer because she felt her supervisor was disrespectful. While there may have been a personality conflict between the claimant and Ms. Perkins, Ms. Perkins did not make negative comments about the claimant's attitude or any anger issues, except with regard to the final incident, when given an opportunity to do so during the hearing. The claimant could not cite specific incidents of problems with Ms. Perkins other than that she said the claimant "damn well better have her work done" on one occasion. The claimant did complain about Ms. Perkins to Human Resources Director Pam Lundgren other times and Ms. Lundgren investigated her complaints but was not at liberty to discuss any possible disciplinary action that occurred as a result. Additionally, the employer has video throughout the building and did not observe Ms. Perkins mistreating the claimant. Consequently, the administrative law judge concludes the claimant voluntarily left her employment and has not demonstrated that her leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

DECISION:

The October 5, 2006, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly

benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,563.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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