

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYANNA L WELLS
Claimant

APPEAL NO. 07A-UI-04495-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA JEWISH SENIOR LIFE CENTER
Employer

**OC: 12/17/06 R: 02
Claimant: Respondent (5)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Iowa Jewish Senior Life Center filed a timely appeal from the April 30, 2007, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on May 17, 2007. Claimant Tyanna Wells participated. Suzanne Meyers, Director of Nursing, represented the employer and presented additional testimony through Nora Cable, Human Resources Representative. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received employer's Exhibits One and Two into evidence. The parties waived formal notice on the issue of whether the claimant had been overpaid unemployment insurance benefits. The parties waived formal notice of the governing sections of the Iowa Code, which information had been omitted from the notice.

ISSUES:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes the claimant voluntarily quit.

Whether the claimant'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: Tyanna Wells was employed by Iowa Jewish Senior Life Center as an on-call or p.r.n. nursing assistant from January 11, 2007 until April 11, 2007. On April 1, a resident for whom Ms. Wells had provided care complained to other staff that Ms. Wells had been unresponsive and insensitive to his needs. Another nursing assistant forwarded the complaint to Director of Nursing Suzanne Meyers. Ms. Meyers investigated the matter and prepared a "Quality Assurance Variance Report" or counseling form to be reviewed with Ms. Wells. Ms. Meyers decided to suspend or remove Ms. Wells from the work schedule until Ms. Meyers had a chance to meet with Ms. Wells to discuss the complaint. Ms. Meyers intended to return Ms. Wells to the work schedule once the matter was reviewed with Ms. Wells.

Ms. Wells was next scheduled work on Thursday, April 5 and appeared for her shift on that day. When Ms. Wells checked the work assignment information for the shift, she noted that her name

was not on the documentation and that she had not been assigned any duties. Ms. Wells asked a fellow nursing assistant what was going on. The nursing assistant advised Ms. Wells that she thought Ms. Wells had been fired. Ms. Wells then located Nursing Secretary Nora Cable. Ms. Wells asked Ms. Cable why she had been removed from the schedule. Ms. Cable asked whether Ms. Wells had received a call from Ms. Meyers and Ms. Wells indicated she had not. Ms. Wells asked Ms. Cable why other employees were saying that Ms. Wells had been fired. Ms. Cable told Ms. Wells that she would need to speak with Ms. Meyer and directed Ms. Wells to call Ms. Meyer the next day, Friday, April 6, at 9:00 a.m. Ms. Wells called as directed, but Ms. Meyer was not at the workplace. Ms. Wells spoke to Ms. Cable, who directed Ms. Wells to come to the workplace on Monday, April 9, at 9:00 a.m. to meet with Ms. Meyers. Ms. Wells told Ms. Cable that she would be unable to do that because she did not have a car. Ms. Cable then directed Ms. Wells to call on April 9 at 9:00 a.m. to speak with Ms. Meyers.

On Monday, April 9, Ms. Wells called Ms. Meyers at 9:00 a.m. as directed. Ms. Wells asked Ms. Meyers why she had been taken off the schedule. Ms. Meyers asked Ms. Wells to come in and meet with her that day. Ms. Wells indicated she was unable to come to the workplace, due to a lack of transportation. At that time, Ms. Meyers and Ms. Wells agreed to meet on Thursday, April 12. Ms. Wells asked Ms. Meyers what the meeting was about. Ms. Meyers declined to go into that matter on the phone. Ms. Wells asked Ms. Meyers why her coworkers were saying that she was going to be fired. Ms. Meyers told Ms. Wells that she just wanted Ms. Wells to come in and speak with her before she put Ms. Wells back on the schedule.

On Wednesday, April 11, Ms. Wells called the workplace and spoke with Ms. Meyers. Ms. Wells told Ms. Meyers that she would not be coming in to meet with Ms. Meyers and that she was quitting.

Ms. Wells established an "additional claim" for benefits that was effective April 8, 2007 and has received benefits.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Ms. Wells quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded 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).

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.

The evidence in the record indicates that as of April 9, 2007, the employer had conveyed to Ms. Wells that she would be returned to the work schedule after she met with Ms. Meyers on April 12. Despite whatever rumors had been circulating in the workplace, the employer had not communicated to Ms. Wells that she was discharged from the employment. A reasonable person would not have concluded, based on unauthorized statements made by a coworker, or based on Ms. Cable's referring Ms. Wells to Ms. Meyers, that the employee had been discharged from the employment. The greater weight of the evidence establishes a quit, not a discharge.

The remaining question is whether Ms. Wells' quit was for good cause attributable to the employer.

871 IAC 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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record indicates that Ms. Wells quit in response to having all of her scheduled hours taken away without any prior discussion as to why they were being taken away. This complete denial of hours amounted to a significant change in the conditions of Ms. Wells' employment. Ms. Wells' quit in response to the changed conditions was timely. The

administrative law judge concludes that Ms. Wells' voluntary quit was for good cause attributable to the employer. Accordingly, Ms. Wells is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Wells.

DECISION:

The claims representative's April 30, 2007, reference 03, decision is modified as follows: The claimant voluntarily quit 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/css