

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RHONDA L GARRISON
Claimant

APPEAL NO: 06A-UI-11760-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLY SPIRIT RETIREMENT HOME
Employer

**OC: 11-05-06 R: 01
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Holy Spirit Retirement Home filed a timely appeal from an unemployment insurance decision dated November 29, 2006, reference 01, that allowed benefits to Rhonda L. Garrison. After due notice was issued, a telephone hearing was held on December 20, 2006, with Ms. Garrison participating. Amanda Van Wyhe, Attorney at Law, appeared on behalf of the employer. Pat Tomscha, Lori Ames, Jon Beringer, Vergene Bosse and Kathleen Martinson testified.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Rhonda L. Garrison was employed by Holy Spirit Retirement Home from October, 1999 until she resigned on or about October 9, 2006. She last worked full time as a CNA/CMA. Ms. Garrison returned from a month-long FMLA leave in early October 2006. Her medical restrictions were the same when she returned as when she left. Nevertheless, she found upon her return that some of her duties had been re-assigned to other staff members. In particular, Ms. Garrison spent over half a typical work day passing out water pitchers to the residents and assisting them to and from the dining area for breakfast and lunch. These duties did not require significant bending or lifting, tasks which Ms. Garrison was to perform only on a limited basis. The tasks added to Ms. Garrison's work day involved more strenuous activities. She spoke to the director of nursing concerning this change of duties. The director of nursing stated that she wanted to have the person who had assumed the meal duties to continue in that capacity. After working with the new schedule for approximately a day and a half, Ms. Garrison resigned.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. It does.

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. See Iowa Code section 96.6-2. The evidence persuades the administrative law judge that the employer made a significant change in the claimant's work schedule while the claimant was on FMLA leave. The changes involved over half the claimant's previous duties, and it substituted more strenuous duties for those being re-assigned. Benefits are allowed. See 871 IAC 24.26(1).

The administrative law judge makes no finding as to whether the employer's actions constituted a violation of the Family and Medical Leave Act. That is beyond the jurisdiction of this administrative law judge. However, changing an employee's duties while on FMLA gives the impression of retaliation and raises the question of whether the employer is creating intolerable or detrimental working conditions. See 871 IAC 24.26(4).

DECISION:

The unemployment insurance decision dated November 29, 2006, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs