

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

POLLY S SWARTZ
Claimant

TENCO INDUSTRIES, INC
Employer

APPEAL NO. 12A-UI-04325-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/18/12
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated April 10, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 7, 2012. Claimant participated. The employer participated by Joanie Lundy, the human resources director, and Rhonda Johnson, the support services director. The record consists of the testimony of Polly Swartz; the testimony of Rhonda Johnson and the testimony of Joanie Lundy.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides services to individuals with mental illness and mental disabilities. The claimant was hired on July 5, 1993. She was a full-time residential instructor. Her last day of work was March 16, 2012. She voluntarily resigned her position effective March 16, 2012.

Since June of 2007 the claimant worked a 40-hour workweek from 3:30 p.m. on Friday until 7:30 a.m. on Sunday. On February 26, 2012, the employer announced a change of hours for employees. The claimant's shift changed from 3:30 p.m. through 10:00 p.m. Monday through Friday and 10:00 a.m. through 8:00 p.m. on Saturday. The claimant had only one day off from work and her duties substantially increased. She was required to do the work previously done by three full-time staff members.

The claimant tried to work the new schedule for one week and felt she could not do it. She was required to care for three aging individuals and in addition to the one-on-one care provided, she had to do the banking; the meal preparation; and grocery shopping. She was exhausted and had no time to spend with her family. The claimant gave her two-week notice to quit. She also

knew she had to find a job and was able to secure part-time minimum wage employment with K-Mart.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

The claimant clearly initiated the separation of employment in this case. The issue is whether there was good cause for her decision to resign her position. The evidence showed that there was a substantial change in the contract of hire and that it was these changes that led to the claimant's decision to quit. As an example, the claimant was switched from three days per week to six days per week. There was a change in the hours that she worked that was equally substantial. In addition, the claimant's work duties were increased. She considered herself to be doing alone what three staff persons had done in the past. The administrative law concludes that there was a substantial change in the contract of hire. The claimant's decision to quit her is therefore with good cause attributable to the employer. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated April 10, 2012, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css