

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TERI A GONSALES**  
Claimant

**APPEAL 15A-UI-05290-KC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OPTIMAE LIFESERVICES INC**  
Employer

**OC: 04/12/15**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 23, 2015, (reference 01) unemployment insurance decision that denied benefits based on voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on June 9, 2015. The claimant participated. The employer participated through Tiffany Wagler, Service Coordinator. Administrative Assistant Susan Lay was present but did not testify.

**ISSUE:**

Whether the claimant voluntarily quit the employment for good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as customer support staff-person. The claimant began part-time work on or about November 4, 2013 and went full time in February of 2014. She last worked on April 9, 2015.

The claimant quit after she was called into her supervisor's office for a coaching to discuss issues that her supervisor had with her following procedure for switching shifts with other employees and following chain of command within the levels of management. Wagler did not tell the claimant that her job was in jeopardy. Wagler's supervisor Vanessa Weller was in the meeting and told the claimant to "quit or stay, your decision, we don't care." The claimant decided to quit because she felt harassed by her supervisor and thought after several months of experiencing the same issues that she had expressed to Wagler and her supervisors, the situation would not improve.

Wagler provided inconsistent instructions regarding finding substitutions for shifts. She expected written shift substitution forms to be completed and approved before the shift. She also said if the shift change was for the same day to call and then bring in the paperwork because it could not be approved in time. The claimant followed the required practice on all but

one occasion where she did not get prior approval. Wagler told employees to get their own substitutes. The claimant did so and was admonished for doing so.

After the claimant became frustrated with Wagler's response to her concerns, she went to Wagler's supervisors. The situation would improve temporarily. The claimant was coached about going to other supervisors although she understood the employer's policy was to go progressively up through the chain of command.

The claimant received calls and texts from her supervisor on her days off, holidays, and late hours. Wagler called the claimant sometimes several times during a shift for which she was not scheduled and ask her when she could come in. She called the claimant on Easter evening and repeatedly demanded that the claimant come to work. The claimant was not scheduled and was out of town. Wagler would put the claimant's schedule in a building to which she was not assigned to work and which she could not access, and then contact the claimant and tell her that she was missing shifts. Wagler called and texted the claimant after her employment had ended to return to work and correct paperwork that was not related to the separation. Other staff advised the claimant she could not do so as she was no longer an employee.

The claimant and Wagler disagreed about whether the claimant properly requested leave. The claimant was in the emergency room on March 9, 2015. The claimant called Wagler on her cell phone twice and could not get an answer or leave a message. She also sent a text about why she would miss her shift. Wagler denied receiving any messages. The claimant showed Wagler and her supervisors her own cell phone entries for that date.

The claimant reported her concerns to Wagler that some staff practices violated state standards. She told Wagler and did not receive a response. The situation did not improve.

The claimant requested some schedule changes to accommodate her family's needs. Wagler agreed to the changes but more recently reduced the total number of hours per week by five hours and provided inconsistent reasons for the reduced hours.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The claimant provided uncontroverted testimony about Wagler's inconsistent instructions, texting rules, persistent calls and texts to the claimant when she was not scheduled, putting the claimant's schedule in buildings to which she did not have access, and lack of response to safety issues. Wagler provided inconsistent instructions to the claimant in several areas of the work and then reprimanded her. Where claimant was required to work in two separate positions and received contradictory instructions from two different supervisors and quit after being reprimanded for his job performance was entitled to benefits. *McCunn v. Emp't Appeal Bd.*, 451 N.W.2d 510 (Iowa Ct. App. 1989).

The employer created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

**DECISION:**

The April 23, 2015, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible and the benefits withheld shall be paid.

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Kristin A. Collinson  
Administrative Law Judge

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Decision Dated and Mailed

kac/css