

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MARY WOODSON
508 E WARREN
MT PLEASANT IA 52641**

**HEARTLAND HEALTH MANAGEMENT
ARBOR COURT INC
701 E MAPLELEAF DR
MT PLEASANT IA 52641**

**Appeal Number: 04A-UI-11316-ET
OC: 09-05-04 R: 04
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment
Section 96.3-7 - Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed from the October 7, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 10, 2004. The claimant participated in the hearing. Chris Jensen, Dietary Services Manager, and Sheila Matheney, Administrator, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A representative's decision was mailed to the employer's last known address of record on October 7, 2004. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 17, 2004. That date fell on a Sunday so the appeal was due October 18, 2004. The employer received the decision October 20, 2004, and filed its appeal on that date. Consequently, because the employer filed its appeal on the day it received the decision, the administrative law judge concludes the employer's appeal is timely.

The claimant was employed as a full-time cook for Arbor Court from June 11, 1997 to September 4, 2004. She voluntarily quit her employment instead of temporarily working a different shift. The claimant was initially hired part-time and went to full-time with no specified work hours. She typically worked the day shift but often worked afternoon and evening hours when she wanted to work overtime. She was on vacation the week before her separation and her supervisor called her before she returned to ask that she help fill in on the 1:00 p.m. to 8:00 p.m. shift. The employer lost a night employee and needed help covering those hours before another cook could be hired. The claimant refused, stating that she had a lot of appointments, and the employer told her it was willing to work around those appointments. The claimant then stated she could not find a sitter for her child and voluntarily quit.

The claimant filed a claim for unemployment insurance benefits effective September 4, 2004 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left 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.

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 voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v.

Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated her intent to quit and acted to carry it out when she told the employer she was quitting instead of temporarily working on a different shift. The law presumes a claimant has left employment with good cause when she quits because of a change in the contract of hire. A change in the contract of hire would include any change that would jeopardize the worker's safety, health or morals. The change must be substantial in nature. 871 IAC 24.26(1). The only change in the claimant's employment was a temporary change of hours. She had worked the evening hours before and the employer was only asking her to do so for two weeks. This is not considered to be a substantial change in the claimant's contract of hire. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. The claimant has not satisfied that burden. Consequently, benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The October 7, 2004, reference 01, decision is reversed. The claimant voluntarily left 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 \$3,560.00.

je/tjc