

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

REGINA R MAUCH
403 – 12TH ST NW
FT DODGE IA 50501

RABINER TREATMENT CENTER
PO BOX E
FT DODGE IA 50501

Appeal Number: 04A-UI-02564-SWT
OC 01/18/04 R 01
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 3, 2004, reference 02, that concluded the claimant was not under disqualification for failing to accept work on January 16, 2004. A telephone hearing was held on March 30, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Joyce Zehr participated in the hearing on behalf of the employer with a witness, Tim Heller and Nissa Ray.

FINDINGS OF FACT:

The claimant worked for the employer from August 20, 1999 to January 16, 2004. Prior to September 21, 2003, the claimant was working full time, 40 hours per week, as a case aide at a rate of pay of \$12.72 per hour. In September 2003, the claimant requested to have her position changed to part time because she was not able to handle working 40 hours while attending school. The employer agreed and the claimant received a written confirmation on

September 18, 2003, that her position was being changed to a part-time case aide position working 30 hours per week at a rate of pay of \$12.73.

In mid-December 2003, the claimant's supervisor, Nissa Ray, asked the claimant if she was interested in a part-time therapist position. The claimant was not interested because she had her part-time case aide position and did not know that her part-time position was being eliminated.

During the week of December 22, 2003, management decided that claimant's position as a part-time case aide was not working out and the employer needed a full-time employee in the position. On December 30, 2003, the employer posted a full-time case aide position with a closing date of January 6, 2004, which was to replace the part-time job the claimant was performing.

On January 5, 2004, the claimant met with Ray and Tim Heller, the director of residential treatment. Claimant let them know that she was not interested in the full-time case aide position and asked them where that left her in terms of employment. They indicated that they would get back to her.

On January 13, 2004, the claimant declined a position as youth counselor with reduced hours and rate of pay. On January 14, 2004, the claimant met with Heller because he indicated that he might have an option for her. The position was a part-time job in a day treatment program for which Heller expected to receive funding. On January 16, 2004, the claimant met with Ray and Joyce Zehr, the human resources manager, about the part-time day treatment job. The claimant declined the job because it only guaranteed her 18 hours of work per week with the possibility of 10 additional hours, the hours were less flexible than the case aide job, and the rate of pay was not definite because the funding was not secured. Ray informed the claimant that the employer had offered her all of the positions available and her part-time case aide position was no longer available. Ray asked the claimant if she would train her replacement, but the claimant declined and said she guessed it was her last week. Zehr and Ray then asked for the claimant's keys and final time sheet.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 18, 2004. The claimant was not personally offered and did not definitely refuse any offers of work after January 16, 2004.

REASONING AND CONCLUSIONS OF LAW:

The first issue is how to characterize the claimant's separation from work. The Agency treated this a refusal of suitable work case. The unemployment insurance rules, however, state that before a person can be disqualified for failing to accept suitable work, "both the offer of work and the claimant's accompanied refusal must occur during the individual's benefit year." 871 IAC 24.24(8). The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. In this case, any offers of work were made before the claimant's benefit year, which started on January 18, 2004. The employer asserted that the Heller offered the claimant the day treatment job on January 29, 2004, but the claimant disputes this and I find her testimony more creditable.

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. In my judgment, since the claimant was offered continuing work before her employment ended, the case should be treated as a voluntarily quit and evaluated as to whether the claimant had good cause to discontinue employment.

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.

The jobs offered the claimant involved a substantial change in the claimant's job duties, work hours, and compensation. In regard to the day treatment job, she was only guaranteed 18 hours, which involves a substantial change in hours and her wage rate was not certain at the time the offer was made. Good cause for leaving employment has been proven.

In the alternative, I would concluded that if the claimant was discharged when the claimant was asked for her keys and final time sheet, the discharge was not be for work-connected misconduct.

DECISION:

The unemployment insurance decision dated March 3, 2004, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/b