

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE J STRONG
Claimant

APPEAL NO. 07A-UI-09650-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW CHOICES INCORPORATED
Employer

**OC: 09/02/07 R: 04
Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

New Choices Incorporated (NCI) filed an appeal from a representative's decision dated October 4, 2007, reference 02, which held that no disqualification would be imposed regarding Connie Strong's separation from employment. After due notice was issued, a hearing was held by telephone on November 14, 2007. Ms. Strong participated personally. The employer participated by Sarah Meier, Human Resources. Exhibits 1 through 16 were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Strong was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Strong was employed by NCI from September 25, 2006 until August 31, 2007. She was hired as and worked full time as a program supervisor. She quit the employment after she was demoted from supervisor to direct care worker. There would have been no changes in her work, pay, or benefits but she would not have been performing supervisory functions.

Ms. Strong's demotion was due to reports of abuse made by her coworkers. She was responsible for providing care to three mentally retarded adolescents. In October of 2006, it was reported that Ms. Strong slapped one of the consumers. In actuality, she placed her hands on either side of the consumer's head as the consumer was attempting to "head-butt" her. The Iowa Department of Human Services (DHS) and the Department of Inspections and Appeals (DIA) declined to investigate the matter. As a result of the incident, Ms. Strong was required to undergo further training.

Although there was a DHS investigation on or about July 18, 2007, the employer was unable to provide specifics concerning what prompted the investigation. The decision to discharge Ms. Strong was prompted by a report from her coworkers that she acted inappropriately towards

a consumer on August 27 and 28. She was called in on August 28, her day off, to assist in giving medication to a consumer who was resisting. It was reported that Ms. Strong was angry when she arrived and was slamming items on the counter. It was also reported that she swore at and used profanity in the presence of the consumer. Finally, it was reported that Ms. Strong constantly screamed and swore at residents.

It was also reported on August 28 that Ms. Strong had acted inappropriately with a consumer on August 27 during an outing. The consumer threw her burger on the ground and Ms. Strong picked it up, wiped the grass off, and placed it back on the table for the consumer to eat. The consumer threw a french fry at Ms. Strong and Ms. Strong threw one back at her. Ms. Strong felt the two were throwing fries in a playful manner.

The employer met with Ms. Strong regarding the above allegations on August 31. She was advised that she was being removed from her supervisory role but could continue working as a direct care provider. Ms. Strong did not tell the employer at that time whether she was accepting the demotion. During a telephone conversation with the treatment coordinator on September 1, she did not refute the employer's statement that she was presumed to have quit. Neither DHS nor DIA have made any findings of abuse against Ms. Strong.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes from all of the evidence that Ms. Strong quit working for NCI while work continued to be available to her. As such, her separation is considered a voluntary quit. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Strong quit because she was demoted. She was hired to work as a supervisor but was demoted to direct care worker. While there may have been no loss in pay or benefits as a result of the demotion, it did result in a loss of status. She would become a coworker among people she previously supervised. The administrative law judge concludes that the demotion constituted a substantial change in the terms and conditions of Ms. Strong's employment. As such, it constituted good cause attributable to the employer for quitting. See 871 IAC 24.26(1).

This might be a different case if Ms. Strong's demotion had been based on misconduct. There was an allegation of abuse in October of 2006. However, the government agencies charged with investigating these matters did not make a finding of abuse. Ms. Strong merely placed her hands on either side of the head of a consumer who was attempting to "head-butt" her. Her reaction during the incident did not constitute an act of deliberate misconduct. The employer failed to provide specifics concerning the report of abuse that occurred in July of 2007 and, therefore, the administrative law judge cannot conclude that there was misconduct on that date.

The facts concerning the events of August 27 and 28 are in dispute. The employer did not present first-hand testimony from any individual who was present on either date. Ms. Strong denied that she swore or in any way expressed anger towards the consumer on August 28. The written statements offered by the employer did not identify what profanity was used by Ms. Strong on August 28. Given the state of the evidence, the administrative law judge cannot conclude that there was misconduct on August 28. Although Ms. Strong and the consumer did throw fries at each other on August 27, there was no real evidence that it was done in anything other than a playful manner.

For the reasons cited herein, the administrative law judge concludes that Ms. Strong's demotion was not based on misconduct. The fact that the employer was willing to continue her in a

position working directly with consumers detracts from any contention that she was abusive towards consumers. Although the employer was within its prerogative to demote her, the demotion constituted a substantial change in the terms of employment and, as such, good cause for quitting. Benefits are allowed.

DECISION:

The representative's decision dated October 4, 2007, reference 02, is hereby affirmed. Ms. Strong quit her employment for good cause attributable to the employer. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs