

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALLISON L RABY**  
Claimant

**APPEAL NO. 07A-UI-01133-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BELLE TOUCHE**  
Employer

**OC: 12-31-06 R: 01  
Claimant: Respondent (1)**

871 IAC 24.26(1) – Voluntary Leaving – Change in Contract of Hire

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 22, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 26, 2007. The claimant did participate along with her witnesses, Barb Sitzmann, and was represented by Scott Rhinehart, Attorney at Law. The employer did participate through Lisa Pfeifle, liaison between management and staff, and was represented by Frank Cosgrove, Attorney at Law. Employer's Exhibit One was received. Claimant's Exhibits A and B, and were entered and received into the record.

**ISSUE:**

Did the claimant voluntarily quit her employment with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a licensed esthetician full time beginning April 9, 2004 through May 27, 2006, when she voluntarily quit.

The claimant voluntarily quit because she was being asked to sign a new covenant not to compete agreement that had more restrictive terms than the one she had signed originally. The only reason the claimant decided to attempt to go into business for herself was due to the more restrictive nature of the new non-compete agreement she had been asked to sign. The employer admits that there were changes being made to the non-compete agreement that the claimant would have been required to sign in order to keep working. The claimant has since been forced by a court order to cease operating her own business in the Sioux City area as a result of the non-compete agreement that was in force when her employment ended. She is currently enrolled in school in a department approved training program and is working part time for herself only a few hours per week.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with 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.

Because the non-compete agreement was being changed by the employer, the claimant would have had to agree to and sign and live with the new restrictions. Such a change to the non-compete agreement amounts to a substantial change of the original terms of hire and is considered good cause attributable to the employer for the separation. Thus, the separation was with good cause attributable to the employer. Benefits are allowed.

**DECISION:**

The January 22, 2007, reference 01, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw