

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARLENE HECKE

Claimant

APPEAL NO. 09A-UI-15363-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC

Employer

Original Claim: 09-06-09

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 29, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 13, 2009, and continued on December 30, 2009. The claimant participated in the hearing with Attorney Felicia Bertin-Rocha. Traci Miner, Program Administrator; Jenni Stephenson, Team Leader at Chapel Ridge; Marilee Ernst, DON; Robin Brown, Team Leader at Villa Vista; and Marc Ann Lynch, Human Resources Director, participated in the hearing on behalf of the employer with Attorney Gary Fischer. Claimant's Exhibits One through Seventeen and Employer's Exhibits A through J were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her employment with 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 as a full-time supported living technician for Mainstream Living from December 3, 2003 to September 10, 2009.

Between June 2009 and September 5, 2009, the claimant notified Jenni Stephenson, Team Leader at Chapel Ridge, several times of medication errors, missing consumer funds, and a broken toilet she said caused mold in the bathroom. The claimant also left notes for co-workers and verbally instructed them on how she expected them to perform their jobs even though she did not have any supervisory authority and the other employees were meeting the employer's expectations for the Chapel Ridge site. Additionally, the employer indicated the claimant was "too close" to one consumer specifically and exhibited a "sense of ownership" of Chapel Ridge. As a result of her tone, directives, and behavior toward other employees and consumers she received a written warning August 31, 2009.

Ms. Stephenson investigated the claimant's reports of medication errors, missing consumer funds, and a broken toilet. Employees are required to complete a medication error report and give it to their team leader and also to notify the nurse within 24 hours. The claimant did not fill out the reports and give them to Ms. Stephenson but did send two e-mails regarding her concerns. Ms. Stephenson went to the home but did not find the medication errors the claimant stated existed other than noting that there were some calcium supplement pills that had not been given to a consumer who had hip surgery and she addressed that issue. With regard to the consumer funds complaint, there was a \$40.00 to \$50.00 discrepancy. Ms. Stephenson's investigation discovered that the consumer had \$20.00 in cash on hand and an employee who did not normally work at that site had placed an additional \$20.00 in a cabinet for him. The consumers at Chapel Ridge handle their own finances and, consequently, if there was a possible ten additional dollars missing, the consumer could have spent that at a store the residents of that house frequented. Ms. Stephenson was unable to find any of the mold in the bathroom complained of by the claimant. The carpeting in the restroom did get wet and Ms. Stephenson agreed there was an odor. She called the apartment manager about the smell, as the employer does not own the building, and the manager took care of the problem. The Chapel Ridge consumers are high functioning and do not require the degree of assistance and supervision as do some of the consumers at other sites.

The employer began to believe the claimant's "skill set" would be better suited to a residence where the consumers were lower functioning so she could be more "hands on" and helpful to the residents without enabling them by doing tasks for them that they could do for themselves or "micro-managing" the house as she tended to do at Chapel Ridge. It was also apparent to the employer that the claimant preferred a more structured environment and tried to impose more structure and routine on the Chapel Ridge consumers than was necessary. After considering the situation, the employer decided to move the claimant to the Villa Vista site where the consumers function at a three to six year old level and require continuous supervision, assistance, and a routine. When the claimant was hired by the employer she was told she may be working at different sites and was never guaranteed she would not be moved or her hours would never vary. The claimant attended training at Villa Vista and was scheduled to start working there September 11, 2009. Team Leader Robin Brown was looking forward to having the claimant on her team but received a text message September 10, 2009, from the employer stating the claimant voluntarily quit her job.

The claimant testified she felt "forced out" and thought the transfer to Villa Vista was retaliatory in nature because of the number of complaints she made about situations and staff at Chapel Ridge. She also objected to being moved to Villa Vista because of the first schedule she saw and because one of the consumers there contracted MERSA in July of 2008. Ms. Brown worked hard to try to give the claimant the same schedule she had at Chapel Ridge. She rearranged four of the other five employees' schedules trying to accommodate the claimant's personal schedule while also giving her enough hours to remain a full-time employee with benefits. Ms. Brown made an error on the first schedule by indicating she was to work until 8:30 p.m. rather than 8:30 a.m. as she intended and she corrected that when the claimant questioned her about it. With regard to the MERSA situation, it is contagious and as a result the consumer who had it at Villa Vista was sent to her parent's home to recuperate while the staff at that site disinfected the home. Anyone can be a carrier of MERSA, regardless of whether the individual has had MERSA, and the consumer was required to present a certificate from her physician stating she was free of communicable disease before returning to Villa Vista. DON Marilee Ernst testified that there were no further incidents of MERSA involving staff or consumers and the claimant never spoke to her about any concerns she may have had about MERSA.

REASONING AND CONCLUSIONS OF LAW:

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

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. When the claimant was hired by the employer she was told she might be working at different sites. She was not guaranteed a certain site or specific hours. Because of her actions at Chapel Ridge, the employer decided to move her to Villa Vista, as it felt she was better suited for that environment. It did not change her rate of pay and went out of its way to maintain her hours in an effort to accommodate her personal schedule. While the claimant chose not to move to Villa Vista, she has not demonstrated that there was a substantial change in her contract of hire or that she left because of unlawful, intolerable, or detrimental working conditions. Consequently, the administrative law judge must conclude the claimant has not met her burden of proof. Therefore, benefits are denied.

DECISION:

The September 29, 2009, reference 01, decision is affirmed. The claimant voluntarily left her 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw