

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINNA S ALLMAN
Claimant

APPEAL NO. 12A-UI-03424-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TENCO INDUSTRIES INC
Employer

**OC: 02/26/12
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Tenco Industries, Inc. filed a timely appeal from a representative's decision dated March 30, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on April 18, 2012. Claimant participated. The employer participated by Ms. Joani Lundey, Human Resource Director, and Ms. Rhonda Johnson, Support Staff Director.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Linna Allman was employed by Tenco Industries, Inc. from March 2001 until February 21, 2012 when she voluntarily left employment. Ms. Allman was employed on a full-time basis and worked as a residential instructor providing assistance to disabled individuals at a residential setting. Claimant's immediate supervisor was Rhonda Johnson.

Ms. Allman left her employment with Tenco Industries, Inc. after providing two weeks' advance notice because the employer reduced the claimant's weekend scheduling by approximately four hours per week.

When hired, Ms. Allman was assigned to work on weekends and scheduled to work 40 hours over each weekend between Friday night and Sunday nights. Ms. Allman tendered her resignation after being informed of a management decision not to allow the claimant to work continuously for 40 hours during a weekend period. The employer was concerned that because of the necessity for sleep, that the claimant might not be providing the direct care and supervision needed for clients. To insure that the claimant could continue to work 40 hours or more each week, the employer offered Ms. Allman the option of working one additional shift or a portion of a shift during weekday nights. After considering the matter, Ms. Allman declined and submitted her notice. The claimant preferred to work straight through the weekend hours

because she would not be required to travel to and from the job site and because the claimant desired to keep weekdays open for medical and personal reasons.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer because of a substantial change in the agreement of hire. It does not.

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.

In this matter the claimant was hired under an arrangement that allowed her to work 40 hours consecutively over weekends providing personal care and support to disabled individuals at a residential setting. Later after reviewing the matter, the employer determined that allowing the claimant to work 40 hours straight through was not reasonable because the claimant could not provide the required level of care without rest/sleep. The employer developed a plan that allowed the claimant to substantially continue to work the majority of her working hours over the weekends, but allowed the claimant time away from work for rest. The employer was reasonable in concluding that the claimant could not provide the level of care and supervision required without taking some time away from work over the weekend for sleep. Ms. Allman was given the option of working an additional four hours per week on any weekday night of her choosing or working the approximate 36 hours per week over the weekends offered by the employer. Ms. Allman declined because she thought the change would require more travel to work and the claimant wished to keep all weekdays and evenings free.

Based upon the totality of the evidence in the record, the administrative law judge concludes that although the employer made minor alterations to the agreement of hire, the changes were not of such a substantial nature so as to provide the claimant good cause for leaving employment.

While Ms. Allman's decision to leave was undoubtedly a good decision from her personal viewpoint, for the above-stated reasons the administrative law judge concludes the claimant left employment under disqualifying conditions.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated March 30, 2012, reference 01, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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