

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

LINDA L COX
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LEON IA 50144

DECATUR COUNTY
ATTN COUNTY AUDITOR
LEON IA 50144

Appeal Number: 04A-UI-04799-SWT
OC 03/28/04 R 03
Claimant: Appellant (2)

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 claimant appealed an unemployment insurance decision dated April 22, 2004, reference 01, that concluded she had voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on May 19, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Lila Oiler participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked for the employer as a full time program director for the Decatur County Community Services program from November 21, 2002 to March 15, 2004. Her immediate supervisor was DeAnn Leach. Lila Oiler is the administrator.

In January 2004, the claimant informed Leach that her husband had won a trip to Italy for a week in March. She had paid vacation to cover her time off, and her request for time off from March 2, 2004, through March 9, 2004, was approved. At that same time, she notified Leach that her son and his wife, who live in Florida, were expecting their first child in early March and wanted time off to help them after the baby arrived. Leach suggested that the claimant get a doctor's excuse from her daughter-in-law's obstetrician so that she could use sick leave to cover the absences and avoid getting a write-up. Leach said she did not think it would be a problem and did not indicate that the claimant would have any trouble taking the time off to go to Florida.

The claimant's grandson was born on March 6. She returned to work after her trip to Italy and had a doctor's excuse that stated that her help was needed to care for her grandchild. She requested time off from March 15 to 26, 2004. Leach, however, informed the claimant on March 11 that she could not receive sick leave or protected leave under the Family and Medical Leave Act because it was not covered. Leach told her that the time off would be unpaid and she would be written up for her time off. The claimant said that she understood but would be taking the time off. She and Leach worked on a schedule for co-workers to cover the time off.

A short time after the claimant submitted her written request for time off, Leach called the claimant into her office and informed her that she could not allow the claimant to leave. The claimant consulted with two members of the board of directors and a county commissioner and was encouraged to take the time off because of the circumstances.

On March 15, the claimant confirmed with Leach that she was leaving and gave Leach the replacement schedule. She asked if there was anything else that she needed to do before she left and was told "no." The claimant was gone from March 16 to 23 on her trip to Florida.

The claimant called Leach on March 24 and told her that she was available if needed. Leach asked her to come into the office. The claimant went into the office and was taken to see Oiler. Oiler informed her that because she had left work without leave, she was being demoted to a direct care position with a reduction in her wages to \$8.50 per hour. The new position would have involved a substantial change in the claimant's wages, hours, and worked duties. The claimant declined the position offered to her. The claimant voluntarily left employment on March 24, 2004, because of the substantial change in her job, hours, and wages and because she believed that she was treated unfairly.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit 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.

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 claimant left work due to a substantial change in her hours, wages, and work duties. The employer asserts that it could have discharged the claimant for leaving work without permission. The employer, however, did not discharge the claimant but instead chose to change her job, hours, and wages.

The employer believes that it was justified in demoting the claimant. The case law, however, suggests that the reason for the substantial change in the terms of employment is immaterial. In Dehmel v. Employment Appeal Board, 433 N.W.2d 700, 702 (Iowa 1988), the Iowa Supreme Court stated: "It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer. . . . [G]ood cause attributable to the employer can exist even though the employer be free from all negligence or wrongdoing in connection therewith." In this case, the claimant voluntarily quit employment with good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated April 22, 2004, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf