

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ARIEL S PRITCHARD**  
Claimant

**APPEAL NO: 15A-UI-03194-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALWAYS BEST CARE OF THE CEDAR VAL**  
Employer

**OC: 02/22/15**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving  
Section 96.4-3 – Able and Available for Work  
871 IAC 24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 9, 2015, reference 01, decision that determined she was not eligible for partial or full benefits because she was not considered able and available for her regular work hours. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on April 16, 2015. The claimant participated in the hearing. Tracy Gray, Director of Operations, participated in the hearing on behalf of the employer. The parties waived notice on the separation issue agreeing to have the administrative law judge make a determination on that issue as well based on this hearing.

**ISSUES:**

The issues are whether the claimant was still employed at the same hours and wages prior to her separation from this employer and whether she 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 part-time care giver for Always Best Care of the Cedar Valley from September 30, 2014 to March 13, 2015. She voluntarily left her employment because she was not receiving the same number of hours as she did previously.

Prior to January 2015, the claimant was averaging between 15 and 20 hours per week. Her hours changed February 1, 2015; after the client she had been working with told the employer he did not want the claimant to return because there was an issue with him receiving the change due him after the claimant went to the store for him. The claimant averaged 12 to 15 hours per week in February 2015 working with a client who only needed her two days per week and filling in for other caregivers who were ill or on vacation.

The claimant went to Tennessee, where she had family, to look for other work and was gone from February 27 to March 1, 2015. When she returned she did not have any hours because the two clients she was most recently working with both requested she not return because she was on her phone a great deal of time and took several breaks each shift, sitting down on many occasions. The employer scheduled a meeting with the claimant March 3, 2015 but there was a snow storm that day and the employer could not get to the location of the meeting so the meeting was rescheduled for March 5, 2015. On that date the employer explained the situation with her clients to the claimant and told her it would schedule her more hours as it attained more clients and also that she could still fill in for other employees. The claimant stated she was putting in her resignation notice, effective March 13, 2015, because she was looking for other work in Tennessee and would be moving. The claimant moved to Tennessee on March 15, 2015.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not eligible for benefits for the decline in her hours prior to her separation from employment, and she voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant submitted her resignation notice because she was receiving fewer hours than she had previously and decided to move to Tennessee as a result. The reason the claimant was not getting as many hours as she did prior to January 2015 because the client she was assigned to five days per week requested she not return because he felt the claimant did not return the correct amount of change to him after she went to the grocery store for him. She was then assigned a client in February who only required her services twice per week and another client who did not need her very many hours per week and she picked up some fill in hours for other employees. After working with those two clients for one month, each requested that she not return because they were dissatisfied with her work performance. Consequently, the employer did not have any clients to assign the claimant to work for at the time she returned from Tennessee on March 1, 2015.

The employer never guaranteed the claimant a certain number of hours as a part-time employee and cannot do so because the hours it can assign employees depends on the number of clients it has at any given time. The claimant's reduced hours were the result of her performance and not due to any action on the part of the employer. Three clients asked that the claimant not return to their homes as their caregiver. The employer was willing to increase the claimant's hours as the number of clients increased but could not state exactly when that would occur because of the nature of the business. The claimant could also have worked fill in hours for other employees to increase her number of hours.

Under these circumstances, the administrative law judge concludes the claimant is not eligible for benefits based on the reduction in her hours because she was never guaranteed a certain number of hours as a part-time employee and because the reason for the reduction in her hours was attributable to her own performance and behavioral issues with the clients.

The remaining issue is whether the claimant's voluntary leaving of employment was for good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(2) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(2) The claimant moved to a different locality.

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.

After the claimant's hours went from 15 to 20 per week down to 12 to 15 per week in January and February 2015, the claimant took a trip to Tennessee to see family and look for other work in anticipation of her move to Tennessee. As stated above, however, the reason the claimant's hours were reduced was because three clients asked that the claimant not be allowed to return to work with them due to the claimant's poor performance and behavior while in their homes.

The employer was still trying to find hours for the claimant and she could have made up many of her hours acting as a fill in for other employees who were ill or on vacation but chose to quit and move rather than remain with the employer. Consequently, the administrative law judge finds the claimant has not demonstrated that her leaving was attributable to the employer as required by Iowa law. Therefore, benefits must be denied.

**DECISION:**

The March 9, 2015, reference 01, decision is affirmed. The claimant was still employed at the same hours as contemplated in her part-time contract of hire, prior to her separation from employment, as her actions caused the reduction in her hours. She 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/can