

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALICE C ANDREWS**  
Claimant

**APPEAL NO. 07A-UI-11270-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**OC: 06/03/07 R: 02**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Leaving  
871 IAC 24.26(4) – Intolerable Working Conditions  
Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 3, 2007, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on December 26, 2007. Claimant participated. Employer participated through Stephanie Webber.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time temporary customer service representative (CSR) at EDS in Des Moines, Iowa, with a Kelly Services (Kelly) office on-site from October 22, 2007 until November 12, 2007 when she was released due to a positive drug screen for a pain pill (Darvocet), which was resolved in her favor by the medical review officer (MRO). On November 13, the manager at EDS said she could not reapply for work and would have to take it up with Kelly. On November 14, claimant communicated with the lab and was told that it was highly doubtful that they would change the results. On November 15, Webber (Kelly) called and told her she was able to get a reversal from the lab but she was not sure EDS would take her back. Webber called her again later to say EDS would take her back and to report for continuation of her training on November 16. Claimant told Webber she did not like that she was unpaid for the three days while the drug screen issue was being resolved and that EDS had changed its policy about benefits and said she did not know what she would do. She left a message at 7:00 a.m. on November 16 that she did not want to work for the company (EDS) any longer. There was subsequent communication with Kelly multiple times about a November 11 paper paycheck that did not clear twice until November 21 and the overdraft charges that are still not resolved.

## REASONING AND CONCLUSIONS OF LAW:

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

871 IAC 24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942).

Since EDS changed its policy about eligibility for benefits and Kelly had delayed payment of wages and resulting overdraft charges, claimant's decision to quit the assignment and Kelly was with good cause attributable to the employer. Benefits are allowed.

**DECISION:**

The December 3, 2007, reference 02, 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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