

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY L MESSER
Claimant

APPEAL NO. 14A-UI-13176-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEXINGTON SQUARE LLC
Employer

OC: 11/30/14
Claimant: Appellant (1)

Section 96.5(1) - Voluntary Quit

STATEMENT OF THE CASE:

Brandy Messer filed a timely appeal from the December 12, 2014, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that she had voluntarily quit on November 21, 2014 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 15, 2015. Ms. Messer participated. Tami Elder represented the employer and presented additional testimony through Raegan Longshore.

ISSUE:

Whether Mr. Messer separated from the employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brandy Messer was employed by Lexington Square, L.L.C., as a full-time respiratory therapist from August 27, 2014 until November 21, 2014, when she voluntarily quit due to the overnight work hours. At the time Ms. Messer accepted the employment, she understood that the work hours were 6:00 p.m. to 6:00 a.m. Ms. Messer struggled with maintaining the appropriate level of alertness in connection with the overnight work hours. About a month before Ms. Messer quit, Ms. Messer elected to trade work hours with another employee so that Ms. Messer could work shorter overnight shifts. The new work hours were 10:00 p.m. to 6:00 a.m. On November 21, 2014, Ms. Messer notified the employer that she was quitting the employment. The primary basis for the quit was the overnight hours. A second basis for the quit was the work environment, which included negativity that some of Ms. Messer's coworkers directed at Ms. Messer's supervisor. The negativity was not directed at Ms. Messer. Ms. Messer's quit was effective November 21, 2014. Ms. Messer reaffirmed her decision to quit the employment on November 24, 2014. Ms. Messer quit without providing the employer a notice period.

At the time Ms. Messer voluntarily quit the employment, she believed she had an offer of full-time employment with a new employer. On December 10, 2014, Ms. Messer learned that the prospective new employer did not have full-time employment for her. Instead the prospective employer only had on-call employment for her. Ms. Messer accepted the offer of on-call work and commenced working for the new employer on November 17, 2014.

REASONING AND CONCLUSIONS OF LAW:

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.] The administrative law judge must follow the plain language of the statute.

Iowa Admin. Code r. 871-24.25(18) 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:

(18) The claimant left because of a dislike of the shift worked.

The evidence in the record indicates that Ms. Messer's decision to leave the employment was not based solely on obtaining other or better employment. Ms. Messer's quit was primarily based on her dissatisfaction with the work hours, though she knew the work hours at the time

she accepted the employment and was subsequently able to amend the hours to a shorter shift. Ms. Messer's voluntary quit was without good cause attributable to the employer. Accordingly, Ms. Messer is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The December 12, 2014, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs