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

KIMBERLY S PARKER
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BATTLE CREEK IA 51006 8611

GOOD SAMARITAN SOCIETY INC
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-02753-DWT
OC: 02/05/06 R: 01
Claimant: Respondent (1)

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:

Good Samaritan Society, Inc. (employer) appealed a representative's February 23, 2006 decision (reference 03) that concluded Kimberly S. Parker (claimant) was qualified to receive benefits and the employer's account could be charged because the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 28, 2006. The claimant participated in the hearing. Lia Aikey, the administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in April 2004. The employer hired the claimant to work as a full time dietary supervisor. At the time of hire, the claimant understood she would be required to go to classes and become certified. The claimant started the certification process, but she did not complete the process. When the claimant worked full time, she worked only day hours.

At the claimant's request, in November 2005 the claimant reduced her hours and worked part time or 28 hours a week. The claimant only worked the day shift. The employer suggested that the claimant and another employee work as co-dietary supervisors. The other co-dietary supervisor started taking classes to become certified. Communication problems developed between the claimant and the co-dietary supervisor. The employer concluded the primary issue was a communication issue and purchased a notebook so the two employees could write notes in attempt to resolve their communication issues. After the employer gave the claimant the notebook, the notebook was not again seen. The claimant did not use the notebook.

In January 2006, the employer's census was down and all employees' hours had to be reduced. The employer allowed employees to make up hours in another job or another shift. The employer reduced the claimant's hours to 17 hours a week.

In mid-January 2006, the employer informed the claimant her hours had to be reduced, but she could work up to 28 hours by taking residents to appointment and making cakes for special occasions. The claimant was already doing these jobs and these extra hours were not guaranteed or predictable. The employer also indicated the claimant could work 10 or 11 more hours a week by working a night shift that ended at 8:00 p.m. Finally, the employer told the claimant that the co-dietary supervisor position was not working out for the employer. As a result, the other employee who was taking the certification classes would become the dietary supervisor. The claimant would continue to work as a dietary employee.

On January 16, 2006, the claimant gave the employer her two-week notice. The clamant quit because her hours were reduced to the point she would no longer be covered under the employer's health insurance, she had never previously worked at night, she would not work at night for extra hours and she could not work as the co-dietary supervisor's subordinate. The claimant's last day of work was January 27, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant quit her employment on January 16, 2006 when she gave the employer her two-week notice. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code § 96.6-2.

The law presumes a claimant leaves employment with good cause when she quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The evidence indicates the employer had to reduce everyone's hours of work because of a low patient census. The employer may assert the reason for the wage reduction was not the fault of the employer. In Wiese v. Iowa Department of Job Service, 389 N.W.2d 676 (Iowa 1986), the Iowa Supreme Court stated: "We believe that a good faith effort by an employer to continue to provide

employment for his employees may be considered in examining whether contract changes are substantial and whether such changes are the cause of an employee quit attributable to the employer."

In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in hours was, as a matter of law, a substantial change in the contract of hire. Further, while citing Wiese with approval, the Court stated that:

> 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.

(Id. at 702.) Dehmel the more recent case is directly on point with this case. Therefore, the fact the reduction in hours may have been due to circumstances beyond the employer's control, under the reasoning of Dehmel, is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer. The employer reduced the claimant's hours by 40 percent.

The employer also asserted the claimant could have continued to work 28 hours a week if she would have worked some evening hours. Since the claimant has not been required to work evening hours before, this again amounts to a substantial change in the employment relationship. As a matter of law, the 40 percent reduction in hours constitutes a substantial change in the employment relationship. Therefore, as of February 5, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 23, 2006 decision (reference 03) is affirmed. The claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. As of February 5, 2006, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc