

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDSAY M TOTTEN

Claimant

APPEAL NO. 06A-UI-09765-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC

Employer

**OC: 08/27/06 R: 04
Claimant: Appellant (4)**

Section 96.5(1) – Quit
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Lindsay Totten, filed an appeal from a decision dated September 26, 2006, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 18, 2006. The claimant participated on her own behalf. The employer, APAC, did not participate.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer and whether she is able and available for work.

FINDINGS OF FACT:

Lindsay Totten was employed by APAC from September 19, 2005 until September 7, 2006. She was a full-time customer service representative (CSR). On July 10, 2006, the claimant was notified her position was being eliminated. On July 27, 2006, she went on maternity leave, which was to last until her doctor released her to return to work. On September 7, 2006, she notified APAC she was not going to accept the job offer made to her to work as a CSR on another account because the rate of pay was \$9.00 per hour when she had been earning \$11.00 per hour. Her doctor released her to return to work on October 2, 2006.

REASONING AND CONCLUSIONS OF LAW:

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's job at APAC was eliminated. Although she was offered other work, she refused because the rate of pay had been reduced by almost 20 percent. This is a substantial change in her contract of hire and does constitute good cause attributable to the employer for quitting.

Iowa Code section 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".

The claimant was not able and available for work from the effective date of her claim on August 27, through her released by the physician on October 2, 2006. During this time she cannot be considered eligible for benefits.

DECISION:

The representative's decision of September 26, 2006, reference 02, is modified in favor of the appellant. Lindsay Totten quit with good cause attributable to the employer. However, as she was not able and available for work until October 2, 2006, she would not be eligible for benefits for the period from August 27 through September 30, 2006.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw