

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA A MCCUSKER
Claimant

ABRH LLC
Employer

APPEAL 19A-UI-03689-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/14/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 2, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment for personal reasons. The parties were properly notified of the hearing. A telephonic hearing was held on May 23, 2019. The claimant, Christina A. McCusker, participated, along with witnesses Annette Ferrell and Trisha LePrevost. The employer, ABRH, L.L.C., participated through witness Jenny Baker, General Manager; and Thomas Kuiper of Equifax/Talx represented the employer.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a cook, server, host, and supervisor, from August 24, 2017, until March 25 or 28, 2019, when she quit. Claimant quit her employment effective immediately. She provided a note explaining that she was quitting due to her schedule, but Baker never saw this note.

Claimant's main reason for quitting was dissatisfaction with her schedule. Claimant was a part-time employee throughout her employment. Baker never promised claimant a certain number of hours at any point. Her hours fluctuated based on staffing, holidays, and the employer's needs. After someone quit, claimant's hours would increase temporarily. Then, when replacement employees would be hired, claimant's hours would decrease. Claimant's hours also fluctuated depending on her own availability.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was without good cause attributable to the employer. Benefits are withheld.

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 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 section 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 section 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). In this case, claimant quit because she disliked the number of hours she was receiving. The employer never promised claimant a certain number of hours during her employment, and claimant was aware that she was a part-time employee. Claimant has not established that she had a good-cause reason for quitting that is fairly attributable to the employer.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Claimant delivered her work apparel, her keys, and a resignation note to the employer's premises, and she never returned to work. Claimant has shown an intent to quit and an overt act carrying out that intention. Claimant has not proven that she separated from employment with good cause attributable to the employer. Benefits are withheld.

DECISION:

The May 2, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant separated from 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn