

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL A RUSTLUGO
Claimant

APPEAL NO. 08A-UI-02542-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE BOYLE COMPANY INC
Employer

**OC: 02/10/08 R: 01
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Cheryl A. Rustlugo (claimant) appealed a representative's March 7, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from The Boyle Company, Inc. / Rock Rapids Care Centre (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31, 2008. The claimant participated in the hearing. Linda Schleisman appeared on the employer's behalf and presented testimony from one other witness, Vicky Harr. 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 without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on or about May 18, 2007. She worked full time as a registered nurse and charge nurse in the employer's long-term care nursing facility. Her last day of work was February 10, 2008.

The claimant had some physical restrictions due to problems with her hip, which were at least contributing to the claimant's failure to be able to get all of her assigned duties completed within the allotted time. As a result, on February 12, 2008, the employer met with the claimant and explained that it could no longer keep the claimant on as a nurse; the employer indicated it was willing to shift the claimant into a certified nursing aide (CNA) position, however, the employer acknowledged that the claimant would likely not be able to perform many of the physical job functions normally required of a CNA due to her physical restrictions. While the employer might have been willing to provide some type of light duty accommodations for the claimant, that willingness was not conveyed to the claimant. As a result, the claimant determined that she had no choice but to end her employment.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, she would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

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.

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for moving the claimant to the CNA position, the position to which the employer was proposing to move the claimant was not presented as one that she would be able to perform without aggravating her physical problems. The change in the claimant's job duties that had been implemented was a substantial change in the claimant's contract of hire, and would have been a change to duties that would have aggravated her medical condition. Dehmel, supra; 871 IAC 24.26(6)b. Benefits are allowed.

DECISION:

The representative's March 7, 2008 decision (reference 01) is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw