

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA A MORGAN
Claimant

APPEAL NO: 13A-UI-02319-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXCEPTIONAL PERSONS INC
Employer

OC: 01/13/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Debra A. Morgan (claimant) appealed a representative's February 18, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Exceptional Persons, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2013. The claimant participated in the hearing and presented testimony from one other witness, Nicole Benischek. Lisa Paterno appeared on the employer's behalf and presented testimony from one other witness, Megan Henning. 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 for a good cause attributable to the employer?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on October 11, 2006. She worked full time as a direct support professional working in a residential site for persons with disabilities. She normally worked a split shift from 3:00 p.m. to 10:00 p.m. and 6:00 a.m. to 8:30 a.m. on a 2-2-3-3 scheduling, usually working two weekends per month. Overtime was occasionally required, and the employer's policies provided that if a weekend was missed, the employee could be assigned to work a different weekend. The claimant's last day of work was January 16, 2013. She voluntarily quit that day. Her reason for quitting was that she had been assigned to work the upcoming weekend and felt she had to work too many days in a row.

The claimant lives about an hour away from the work site, and had throughout her employment. Her husband is disabled and relies on the claimant for at least some of his care. Because of other staff absences the claimant had worked each day from January 8 through January 15.

She had previously missed a scheduled weekend, and on January 16 she learned that she was being scheduled to work the weekend of January 19. Rather than seeking to switch the weekend with someone else or asking the employer to reconsider, the claimant informed her supervisor, "I can't do this. I'm going to quit." She finished out her shift that day and then did not return to the employment.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). Quitting because of the distance to work and serious family needs or responsibilities are good personal reasons for quitting, but are not attributable to the employer. 871 IAC 24.25(23), (30). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). Rather, her complaints do not surpass the ordinary tribulations of the workplace. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's February 18, 2013 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of January 16, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css