

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

TRUDY J DIETZE  
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MILLERSBURG IA 52308-0032

THE UNIVERSITY OF IOWA  
c/o DAVE BURGEON EMP REL  
121 "R" UNIV SVC BLDG  
IOWA CITY IA 52242

Appeal Number: 06A-UI-05632-JTT  
OC: 05/07/06 R: 03  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit  
871 IAC 24.26(1) – Change in the Contract of Hire

STATEMENT OF THE CASE:

The University of Iowa filed a timely appeal from the May 25, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 16, 2006. Claimant Trudy Dietze participated. David Burgeon, Employee & Labor Relations, represented the employer. Exhibits Two, Three, and A through I were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Trudy Dietze was employed by the University of Iowa as a full-time Clerk III from May 4, 1998 until May 4, 2006, when she quit in response to changes in the conditions of her employment.

Throughout Ms. Dietze's employment she had performed clerical duties in the Carver College of Medicine and had been assigned to work 9:00 a.m. to 5:00 p.m., Monday through Friday.

On January 26, the employer notified Ms. Dietze that it would be eliminating her position and that she should commence a search for a new Clerk III position within the University system. Ms. Dietze did not meet the special qualifications for any positions that came available and was unable to locate another Clerk III position on her own. On April 12, the employer notified Ms. Dietze that she would be reassigned to a Clerk III position in shipping and receiving, where she would perform significant manual labor involving frequent lifting. In addition, Ms. Dietze would be required to work 11:00 p.m. to 7:30 a.m., Thursday through Monday. On April 20, Ms. Dietze presented the employer with a letter from her doctor that indicated she suffered from Restless Leg Syndrome and needed to work dayshift hours to maintain proper sleeping patterns and facilitate correct usage of her medication. On April 25, the employer notified Ms. Dietze that it would not accommodate her health needs unless she provided proof that the health needs were covered under the Americans With Disabilities Act (A.D.A.). On April 26, Ms. Dietze notified the employer that she would not accept the transfer to the new Clerk III position and would continue to report for her normal duties until her position expired on May 3. On May 1, the employer told Ms. Dietze she must accept the reassignment, prove the A.D.A. covered her health concerns, resign, or be discharged under a theory of job abandonment. Ms. Dietze continued to report for her normal duties until her original position expired. After Ms. Dietze failed to appear for three consecutive shifts at the new assignment, the employer terminated her employment under the three days "no-call/no-show" policy.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Dietze's voluntary quit was for good cause attributable to the employer. It does.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record indicates that Ms. Dietze quit the employment in response to substantial changes in the conditions of employment. The substantial changes included the change in hours from the day shift to the overnight shift and change in days worked each week. The substantial changes also included the change from general clerical work to manual labor involving frequent lifting. These substantial changes, and Ms. Dietze's medical concerns, provided good cause for Ms. Dietze's refusal acquiesce in the proposed changes in the condition of her employment. Ms. Dietze promptly quit upon the expiration of her original position.

#### DECISION:

The Agency representative's decision dated May 25, 2006, reference 01, is affirmed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kkf