

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN A MESTAD
Claimant

APPEAL NO. 09A-UI-03655-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASON CITY CLINIC PC
Employer

**Original Claim: 01/25/09
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Lynn Mestad (claimant) appealed a representative's February 24, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Mason City Clinic (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 1, 2009. The claimant participated personally. The employer participated by Dana Young, Administrator. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 27, 2007 as a part-time maintenance person. The claimant signed for receipt of the employer's handbook on October 15, 2007. At the time he was hired, the claimant understood the employer may require him to work more hours that might occur during or outside of normal business hours. Normal business hours were from 8:00 a.m. to 5:00 p.m. The handbook indicated that an employee who worked more than 40 hours per week would earn extra pay per hour. At the beginning of his employment the claimant worked four hours per day.

In November 2007, the employer and claimant agreed to increase his hours to six per day, working 7:30 a.m. to 2:00 p.m. In October 2008, the employer asked the claimant to work an additional two hours per week to catch up on projects. The claimant could add the two hours into his schedule at his discretion. The claimant refused. The employer again asked for the additional time in November 2008. The claimant refused. A room needed to be painted outside of business hours. The employer asked the claimant to perform the work but he refused. The employer had to hire someone else to perform the claimant's work.

On January 8, 2009, the employer wrote the claimant a memorandum regarding the claimant's refusal to work additional hours without "extra compensation above base pay". The employer told the claimant it was unacceptable. On January 10, 2009, the claimant wrote the employer a letter indicating that his job status should change to full-time or he would retire. On January 12, 2009, the employer accepted the claimant's notice of retirement effective January 23, 2009. Continued work was available had the claimant not retired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without 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 24.25(13) and (18) provide:

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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(18) The claimant left because of a dislike of the shift worked.

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). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer to comply with his wishes or he would retire. When an employee quits work because he is dissatisfied with his hours or his known rate of pay, his leaving is without good cause attributable to the employer. The claimant left work because he wanted to be classified as a full-time employee and be paid more for his hours worked than he had agreed upon at the time of hire. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's February 24, 2009 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw