

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA E DUFFY
Claimant

APPEAL NO. 10A-UI-02647-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

**Original Claim: 01/24/10
Claimant: Appellant (4)**

Iowa Code section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-Time Employment

STATEMENT OF THE CASE:

Barbara Duffy filed a timely appeal from the February 17, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 31, 2010. Ms. Duffy participated. Barb Owca, Human Resources Business Partner, represented the employer and presented testimony through Sue Patton, Manager of Post-Anesthesia Recovery Unit. Exhibit A was received into evidence.

ISSUE:

Whether Ms. Duffy's voluntary quit from the part-time employment was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Barbara Duffy, R.N., was employed by Central Iowa Hospital Corporation as a part-time recovery room nurse at Iowa Methodist Hospital in Des Moines from October 28, 2009 until January 11, 2010, when she voluntarily quit. Throughout the employment, Ms. Duffy resided in Marshalltown and commuted to the employment in Des Moines. Ms. Duffy was required to be on call for certain overnight shifts. If Ms. Duffy was called in to work an overnight shift, she was expected to report within 45 minutes.

The commute time from Marshalltown to Des Moines, even in the best of weather, would take more than 45 minutes. Ms. Duffy and Sue Patton, Manager of Post-Anesthesia Recovery Unit, discussed this issue during the hiring process. Ms. Duffy indicated that she had friends in the Des Moines metropolitan area with whom she could stay on nights she was on call. Ms. Patton told Ms. Duffy that if she were called in to work an overnight shift, she could sleep in a designated sleeping room for the remainder of the shift if there was a possibility her services would be needed again later in the shift. Ms Duffy took from this statement the idea that she could sleep in the designated sleeping area any time she had an on-call shift, regardless of whether she was actually called in to work the shift.

Ms. Duffy was still in training throughout the employment and was scheduled to work just two on-call shifts during the roughly 2½ months of the employment. On each occasion, Ms. Duffy slept in the designated sleeping area though she was not called in to work either on-call shift. During January 2010, the employer clarified its policy regarding use of the designated sleeping area. Under the policy, Ms. Duffy was prohibited from using the designated sleeping area unless she had actually been called in to work. Ms. Duffy viewed this as a change in the conditions of her employment and quit the employment. The employer continued to have work available to Ms. Duffy.

REASONING AND CONCLUSIONS OF LAW:

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.

The weight of the evidence in the record fails to establish a change in the conditions of employment. The weight of the evidence indicates that Ms. Duffy misunderstood the policy that was explained to her at the time of hire regarding use of the designated sleeping area. The employer's decision, in January 2010, to enforce its policy after a period of lax enforcement did not constitute a significant change in the conditions of the employment.

Ms. Duffy voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Duffy would be disqualified for benefits *based on wage credits earned from this part-time employment* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Duffy.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit

amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits, may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

This employer is not a base period employer for purposes of the claim for benefits established January 24, 2010. Thus, Ms. Duffy's separation from this part-time employment should have no impact on her eligibility for benefits during the benefit year that started January 24, 2010 and that will end on or about January 23, 2011. Ms. Duffy is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representatives February 17, 2010, reference 01, decision is modified as follows. The claimant voluntarily quit the *part-time* employment without good cause attributable to the employer. The claimant is disqualified for benefits based on wage credits earned through this *part-time* employment until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. Because the employer is not a base period employer in connection with the current claim year, the separation from the *part-time* employment has no effect on the claimant's benefit eligibility during the current benefit year. The claimant is eligible for benefits, provided she is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw