

**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**

**TERRY L HODGES  
627 CRESTON  
DES MOINES IA 50315**

**SEARS ROEBUCK & COMPANY  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-10431-DT  
OC: 08/29/04 R: 02  
Claimant: Appellant (2)**

**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, 4<sup>th</sup> 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 Leaving**

**STATEMENT OF THE CASE:**

Terry L. Hodges (claimant) appealed a representative's September 17, 2004 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Sears, Roebuck & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 4, 2004. The claimant participated in the hearing. Wanda Connolly appeared on the employer's behalf and presented testimony from one other witness, Ron Bennett. During the hearing, Claimant's Exhibit A was entered into evidence. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 10, 1997. She worked full time as a senior customer service representative in the employer's West Des Moines, Iowa call center servicing catalog and on-line merchandise sales. Her last day of work was August 26, 2004.

From the date of her employment until June 2004, the claimant had always worked Monday through Friday, never any weekends. Because of shuffling of duties and schedules, in June 2004 the claimant was given a Monday through Thursday plus Saturday schedule, despite her advance notification to the employer that she could not work on Saturdays due to lack of childcare.

After the change in her schedule, she either found someone who would switch schedules with her for Saturday, or she would call in an absence for the Saturday for lack of childcare. Because of her increased absences, as of August 24 she was given a written counseling for attendance, for a seventh occurrence on August 21, 2004. At that time she had a discussion with her supervisor, Mr. Bennett, at which time she discussed with him the fact that it was apparent that she could not keep her job with the employer due to the employer's scheduling her for work on Saturdays, and she informed him she had decided to seek additional education, and that her classes were starting the next week. She had some understanding that if she simply quit her employment, she might not be eligible for unemployment insurance benefits, so she inquired about how she could be discharged without going through the multiple steps of warning for subsequent absences. Mr. Bennett had a similar understanding about the consequences of a voluntary quit, and told the claimant that under the employer's policies, if she simply was absent without documentation for five days, she would automatically be discharged. Therefore, the claimant called in an absence on August 28, August 30, August 31, September 1, and September 2. On September 2, since she did not have documentation to excuse the absences, she was told she was terminated.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). In this case, the claimant intentionally took actions specifically designed to force the employer to end her employment. Where an employee challenges an employer to discharge her and the employer responds by terminating the employment, it is the employee who took the provocative action who actually intended to cause the separation, and it is treated as a quit for purposes of unemployment insurance. The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless her voluntarily quit for good cause.

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). A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist, nor is it pertinent that the claimant remained an "at will" employee. In this case, the claimant's terms of employment had been that she would work Monday through Friday. The change in her schedule to require Saturday work which was implemented was a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits are allowed.

The administrative law judge notes that there has been a separate representative's decision issued that granted the claimant Department Approved Training (DAT); as a result, so long as the claimant is in the DAT program, the employer is not subject to charge for any benefits paid to the claimant. Iowa Code Section 96.4-6.

DECISION:

The representative's September 17, 2004 decision (reference 02) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer is not subject to charge while the claimant is in Department Approved Training (DAT).

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