IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JENNIFER M GORSH Claimant **WASHINGTON NURSING AND REHABILITATION** Employer	**APPEAL 17A-UI-10188-DB** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/03/17** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 25, 2017 (reference 01) unemployment insurance decision that held claimant ineligible for unemployment insurance benefits. The parties were properly notified about the hearing. An in-person hearing was held on November 15, 2017 in Ottumwa, Iowa. Claimant, Jennifer M. Gorsh, participated personally and through witness Jason Stoneking. Employer, Washington Nursing and Rehabilitation, participated through witnesses Jacqueline Lydolph and Candace Wonderlich. Claimant's Exhibits A and B were admitted. Employer's Exhibit 1 was admitted.

ISSUES:

Did claimant voluntarily quit her employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as a charge nurse from June 13, 2016 and she voluntarily quit her employment on September 2, 2017. Claimant's immediate supervisor was Ms. Lydolph. Claimant's job duties included taking care of all patients and managing staff. This employer operates a nursing home and long term care facility. At the end of her employment, claimant was working shifts that began at 6:00 p.m. and ended at 6:00 a.m. Prior to working 12-hour shifts, claimant had worked from 10:00 p.m. to 6:00 a.m.

When claimant was asked to switch to 12-hour shifts, she specifically requested that she have an additional med aide or an additional nurse during her shifts. Management agreed to this. However, claimant only had a second nurse scheduled to work with her for the first two months. She was not consistently provided an additional med aide during her shifts. This understaffing led to her inability to take a break or eat during her shifts. This understaffing also made her unable to appropriately care for her patients.

July 24, 2017 claimant requested a meeting with her supervisor to discuss the understaffing issues and working conditions it was causing. No additional staff was assigned to her shifts following this meeting.

On one occasion claimant was attending to an emergency with a patient and another patient fell. Both patients needed attention at the same time; however, claimant was the only nurse on duty. Claimant could not reasonably be in two places at one time.

Claimant also brought complaints about the certified nurses who worked the dayshifts not properly documenting the patient's charts so that claimant would be informed about what had transpired with the patient prior to her shift. Claimant was told by management not to worry about what the nurses did for the patients during the previous shift. Claimant believed this was immoral and unethical because it was her responsibility to be informed as to what had transpired with patients when she took over their care.

Claimant had found medical information with patient names thrown in the trashcans. She believed this was a Health Insurance Portability and Accountability Act ("HIPPA") violation and brought this to management's attention. Management had no response to claimant's concerns about HIPPA violations.

Towards the end of August, 2017, claimant again met with Ms. Lydolph about the understaffing concerns she had and the fact that she believed she could not care for the patients in the proper manner with the amount of staff she was being provided. No staffing changes were made following this meeting.

Dayshift had at least two charge nurses, five certified nursing assistants, one medication aide, and two registered nurses or licensed practical nurses. However, claimant's night shift consistently only had one charge nurse (herself), three certified nursing assistants (sometimes two if there was a call-off), and sometimes a medication aide (depending on if the person has a day off). The facility currently has 42 patients to care for. Claimant decided to voluntarily quit because she believed her nursing license was in jeopardy due to the staff shortages that led her to be unable to properly care for the patients.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds that the claimant voluntarily quit with good cause attributable to the employer.

Iowa Code §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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In this case, the claimant voluntarily quit her employment. As such, claimant must prove that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the

average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

The decision in this case rests, at least in part, upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that the claimant's version of events is more credible than that of the employer.

Iowa Admin. Code r. 871-24.26(4) 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:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to her quitting, however, she did on multiple occasions.

It is reasonable to the average person that one nurse cannot physically be in two places at once in order to attend to emergencies. Claimant's nursing license requires that she provide the appropriate care necessary for each patient. Claimant has proven that her working conditions were intolerable and detrimental. Thus, the separation was with good cause attributable to the employer.

Further, claimant has proven that there was a substantial change in the contract of hire. When she agreed to work 12-hour shifts she did so with the agreement that she would have an additional nurse or medication aide during each shift. This additional staffing was not provided on a consistent basis. This is clearly a substantial change given the fact claimant was caring for over 40 patients at one time.

Iowa Admin. Code r. 871-24.26(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.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). Here, it is clear that the understaffing caused a substantial change in claimant's working hours and type of care she was able to give. Claimant has proven a substantial change in her contract of hire. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The September 25, 2017 (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

db/rvs