IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RACHEL M ROGERS
Claimant

HOLY SPIRIT RETIREMENT HOME
Employer

APPEAL NO. 13A-UI-12167-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/29/13
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 17, 2013, reference 01, that concluded the claimant voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on November 21, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with her representatives, Al Sturgeon and Dina Heimgartner. Tim Bottaro participated in the hearing on behalf of the employer. Exhibits Six through Eighteen were admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a certified nursing assistant from March 30, 2011, to September 30, 2013. She was hired to work the second shift from 2:15 p.m. to 10:45 p.m. and worked that shift through June 18, 2013. The physical requirements of the job included occasional lifting of objects of between 10 and 75 pounds while assisting residents with their daily living activities.

The claimant sustained a work-related injury to her elbow in June 2012. She was placed on light-duty work but continued to work her normal shift.

On June 18, 2013, the claimant had surgery on her right arm and was off work through September 18, 2013. As of September 18, 2013, the claimant was released to return to work with the restriction of no lifting over 20 pounds.

As of September 18, 2013, the employer scheduled the claimant to work a split shift that required her to work in the dining room from 7 to 9:30 a.m., from 11 a.m. to 1 p.m., and from 4:00 to 7:30 p.m. The job involved setting up the dining room, feeding and serving residents, cleaning the dining room, and completing the dietary book.

After four days on this job, the claimant provided her supervisors with two-weeks' notice on September 24, that she would be quitting effective October 9, 2013. She informed the employer that the reason she was quitting was that the employer had given her shifts covering a 12-hour period, which violated of the terms of her employment. She emphasized that she had worked her normal schedule with more restrictions before the surgery.

The claimant ended up quitting before October 9, 2013. On September 27, a nurse had left medication in front of a resident sitting in the dining hall. The resident initially declined to take the medication. The claimant had asked repeatedly that the nurse come back to the dining hall to administer the medication, but the nurse said she was busy and the claimant could do it. The claimant ended up coaxing the resident into taking the pills. It was reported to the assistant administrator, Chris Severson, that the claimant had administered medication outside her scope of practice as a CNA.

On September 30, Lisa Turner informed the claimant she was suspended pending investigation of the incident on September 27. The claimant then informed Turner that she was quitting effective immediately.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

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.

There is no requirement that a claimant have a written contract for 871 IAC 24.26(1) to apply. An employee's hiring agreement involves the terms of conditions of employment agreed to by the parties at the time of hire. In this case, the claimant was hired to work 2:15 p.m. to 10:45 p.m. and worked that shift from the time of hire until she stopped working in June 2013 due to surgery related to a work-related injury. From June 2012 until June 2013, the employer had provided the claimant light-duty work on her regular shift.

I conclude that requiring the claimant to work three split shifts over a 12-hour period was a substantial change in the claimant's working hours and shift. This provided good cause to the claimant attributable to the employer for quitting employment.

I have no doubt that the employer's motivation was to supply the claimant with available work within her restrictions. In *Dehmel v. Employment Appeal Board*, the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in hours was, as a matter of law, a substantial change in the contract of hire. The Court emphasized that:

> It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer. . . . [G]ood cause attributable to the employer can exist even though the employer be free from all negligence or wrongdoing in connection therewith.

Likewise, in this case, the employer may have had a good reason to schedule the claimant as they did, but that does not negate that the claimant had good cause to leave employment attributable to the employer. The claimant let the employer know that she objected to the change in her two-weeks' notice. The employer did not take any action to change the schedule. Since the claimant had good cause for quitting, the fact that she advanced her last day of work to September 30 after being informed of her suspension pending investigation does not change the result here. The employer did not discharge the claimant, or impose a disciplinary suspension, which would trigger an inquiry into whether the claimant was guilty of misconduct. *See* 871 IAC 24.32(9) ("Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered discharged, and the issue of misconduct must be resolved").

The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

DECISION:

The unemployment insurance decision dated October 17, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs