

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

SHIRLEY A SMITH
1306 JONES ST
SIOUX CITY IA 51105

HARVEST COMMUNITY/SIOUX CITY
3420 OLD LAKEPORT RD
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Appeal Number: 04A-UI-00937-DT
OC: 12/28/03 R: 03
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Shirley A. Smith (claimant) appealed a representative's January 23, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Harvest Community/Sioux City doing business as Siouxland Nursing & Rehab Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 18, 2004. The claimant participated in the hearing and was represented by Rhoda Tenuta, attorney at law. Gary Durden appeared on the employer's behalf. During the hearing, Claimant's Exhibits A through D were 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: Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on December 13, 2001. Beginning in approximately December 2002 she worked full time as supervisor of the environmental/housekeeping and laundry department of the employer's long-term care nursing facility. Her last day of work was December 23, 2003.

The facility had been under a state inspection from December 21 through December 23. Some of the inspector's findings noted deficiencies in the housekeeping services. The claimant had been having difficulty in obtaining suitable work from some of her employees, and on December 23 approached the facility administrator, Mr. Durden, to impose some discipline upon those employees. When the claimant approached Mr. Durden, he informed her that he was relieving her of her duties. He did suggest the possibility of talking with the dietary department head the next day about transferring to that department. The claimant then left the facility.

The claimant did not go into the facility the next day, December 24, as she had previously been scheduled off that day. The next day, December 25, was Christmas, so she did not go in. She did not go in on December 26 as other contacts with the facility were reporting back to her that she had been discharged. She did meet privately on December 27 with the head of the dietary department, who informed her that there had been no arrangements made to move the claimant into the dietary department, that the only position available was a part-time dietary aide position at \$6.50 per hour in contrast to the claimant's prior \$12.00 per hour, and that she also understood that the claimant had already been discharged. Therefore, the claimant did not pursue continuing her employment with the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit for 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 24.26(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). Mr. Durden asserted that he had subjectively intended on only temporarily reassigning the claimant to the dietary department at her full rate of pay and full hours. However, he did not communicate this to the claimant on December 23, nor did he even take steps to make arrangements to that effect with the director of the dietary department. The claimant reasonably concluded that any position that might be available for her in the dietary department would have been part time and at only about half her hourly pay, and could have been for an indefinite period of time. The change in her employment arrangement would have been a substantial change in the claimant's contract of hire. Dehmel, supra. She therefore had good cause to decline. Benefits are allowed.

DECISION:

The representative's January 23, 2004 decision (reference 01) 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.

ld/kjf