

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEANNA L COUNTRY
Claimant

MERCY HEALTH SERVICES-IOWA CORP
Employer

APPEAL 19A-UI-08992-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/13/19
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant, Mercy Health Services-Iowa Corporation, filed an appeal from the November 5, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 20, 2019. The claimant participated. The employer participated through Jennifer Pierce, employer agent/representative. Beckie Walhberg and Jon Starks testified. Employer Exhibit 1 was admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer’s account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a regional transportation technician and was separated from employment on September 12, 2019, when she quit the employment. Continuing work was not available as a regional transportation technician because her job was eliminated and outsourced.

The claimant in her capacity as a regional transportation technician made \$14.02 per hour, with additional pay for shift differential, and consistent overtime. She worked Monday-Friday, 9:00 - 5:00 p.m. When the employer notified the claimant that her position was being eliminated, it offered her a job as a full-time housekeeper. The hourly rate was the same, and the claimant

disputed whether she would have the same opportunity for shift differential and overtime pay. She did not want to perform housekeeping duties. She also would have been required to work weekends and her shifts would be 7:00 a.m. – 3:30 p.m. She quit the employment, rather than accept the position of housekeeper.

The administrative record reflects that claimant has a weekly benefit amount of \$419.00 but has not received unemployment benefits since filing a claim with an effective date of October 13, 2019. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Jon Starks attended.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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.

An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. ___-___/___-___, Iowa Ct. App. filed ___, 1986). In this case, the change in job position offered to the claimant was not in response to any kind of disciplinary action, but instead due to her position being eliminated through outsourcing. While the employer stated the claimant's base pay would remain the same if she accepted the position from regional transportation technician to housekeeper, her schedule and job duties would have substantially changed, including the claimant being required to work weekends. The claimant has credibly established there was a substantial change in the agreement of hire through her schedule and modification of work. She has met her burden to establish she quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot. (At this time, the claimant had not received any benefits.)

DECISION:

The November 5, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Beckman
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Decision Dated and Mailed

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