

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
IRENE FERGUSON Claimant	APPEAL NO. 07A-UI-07745-D
AMERICAN BAPTIST HOMES OF MIDWEST Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 07/01/07 R: 02 Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Irene Ferguson (claimant) appealed a representative's August 2, 2007 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from American Baptist Homes of Midwest (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on August 29, 2007. This appeal was consolidated for hearing with one related appeal, 07A-UI-07744-D. The claimant participated in the hearing and was represented by Laura Jontz, Legal Intern. Jan Caldwell appeared on the employer's behalf and presented testimony from one other witness, Jackie Livengood. During the hearing, Employer's Exhibits One through Four and Claimant's Exhibit A 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 August 6, 2002. After a short period working part time, she worked several years as a full time consumer staff support person in the employer's Des Moines, Iowa area group homes providing residential services to persons with disabilities. Her last day working full time was May 20, 2007.

For most of the claimant's employment she had worked a full seven day shift working every week night and the full weekend, but only every other week. Given the large number of hours this meant even in a two-week pay period, beginning in about August 2006 the claimant worked only weekends beginning at 3:30 p.m. on Friday through until 8:00 a.m. the next Monday, but only every other week, so she worked approximately 67 hours every two weeks.

On May 15 the claimant's supervisor, Ms. Livengood, informed the claimant that the employer had determined that the claimant would need to be switched to another home because of performance issues related to personality conflicts between the claimant and one of the

residents at the home. She was to work a Friday, Saturday, Sunday and Tuesday, 10:30 p.m. to 9:00 a.m. schedule, and it would be every week. The claimant expressed concern as to how well that would work for her given her normal pattern of only working every other week, but agreed to go through training at the new home, which she did on May 20. She was to begin working the new schedule at the new home beginning May 22. However, on May 22, the claimant contacted Ms. Caldwell, the assistant director, and indicated that the new schedule would not work for her. The claimant expressed her desire to be placed back into a schedule that was comparable to the one she had been taken from, but the employer had no other position with a comparable schedule. The claimant then agreed to take some time to consider her situation.

After an exchange of correspondence between the parties regarding what and when the next step in the matter would be, a meeting was held on June 12. During that meeting the employer again indicated that it had no position for the claimant with hours comparable to the one she had previously had. The claimant then agreed that she would simply go to an on-call status "until she could find a suitable position." The claimant worked one day, June 20, on the on-call basis.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was 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.

The claimant's agreement to go to the on-call status was not a voluntary choice to reduce her hours. Rather, the claimant had quit her full time position with the employer because the employer had substantially changed her work schedule and no comparable full time position was available. She agreed to accept an on-call position only because she was going to be seeking some other "suitable position" and working on-call could have provided her at least some income until she found that new employment.

"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

_____, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good reason for making the change in the claimant's worksite and schedule, the change was a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits are allowed.

DECISION:

The representative's August 2, 2007 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css