

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK A RODRIGUEZ**  
Claimant

**APPEAL NO: 13A-UI-10066-D**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OPPORTUNITY VILLAGE**  
Employer

**OC: 07/28/13**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Mark A. Rodriguez (claimant) appealed a representative's August 27, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Opportunity Village (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on October 31, 2013. The claimant participated in the hearing. Cindy Lefebre appeared on the employer's behalf and presented testimony from one other witness, John Sievertson. 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?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on July 25, 2006. He worked full time as a personal assistant in the employer's organization providing services to persons with disabilities. His last day of work was July 23, 2013.

The vast majority of the claimant's work through July 23 had been at the home of one specific client. The employer paid the claimant \$22,000.00 per year for his work. The family of that client had also separately contracted with the claimant to provide additional time and service with that client as an attendant, and paid him an additional \$13,000.00 for that work.

The claimant was not working with the client from July 23 through July 30 because the client was out of town. On July 30 the claimant had a meeting with the chief executive officer, Sievertsen, as well as the claimant's immediate supervisor. Sievertsen advised the claimant that the client's family had requested that the claimant be replaced as caregiver for the client.

No reason was specified. The employer advised the claimant that work as a personal assistant at an alternate location had been found for him, a group home setting on the employer's campus. The claimant's full time hours and pay of \$22,000.00 per year would remain as had been. The claimant expressed reservation, and did not start working at the group home as scheduled; on August 20 he affirmatively told the employer that he was not going to continue working with the employer under this arrangement. The claimant's primary reason for not accepting the transfer to the group home setting was that when he lost the work with the individual client, he also lost the separate funds that he had been paid from the client's family, and he felt he could not afford to work at the rate he would be making simply working for the employer at the group home.

#### **REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit her employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The law presumes a claimant has voluntarily quit with good cause when he quits because of a substantial change in the contract of hire. 871 IAC 24.26(1); *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist, nor is it pertinent that the claimant remained an "at will" employee. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Here, the claimant's "contract of hire" with the employer was only for the \$22,000.00 he was earning as a personal assistant for the employer; the additional \$13,000.00 he was earning from the client's family was not part of his "contract of hire" with the employer. The employer had found an alternative location in which the claimant could continue to work for the same hours and wages as he had been working. The claimant has not satisfied his burden. There was no substantial change in the claimant's "contract of hire" with the employer. Benefits are denied.

**DECISION:**

The representative's August 27, 2013 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 30, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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