

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

KAYONA A CONLEY
3412 GARFIELD AVE
DES MOINES IA 50317

FIVE STAR QUALITY CARE INC
c/o TBT ENTERPRISES
PO BOX 848
GAITHERSBURG MD 20884

Appeal Number: 04A-UI-10655-DT
OC: 09/05/04 R: 02
Claimant: Appellant (1)

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:

Kayona A. Conley (claimant) appealed a representative's September 28, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Five Star Quality Care, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 21, 2004. The claimant participated in the hearing. Linda Thomas appeared on the employer's behalf and presented testimony from one other witness, Donna Manning. 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 April 1, 1997. She worked full time as a certified nursing aide (CNA) in the employer's Des Moines, Iowa long-term care nursing facility. Her last day of work was September 9, 2004.

Since at least July 2004, the employer had experienced a significant turnover in CNA staffing. Of approximately 32 total CNAs, there had been approximately eight vacancies between early July and early September. The employer had been filling some of the vacancies at least temporarily with persons from a temporary staffing agency. The claimant had several times expressed her concern to the employer regarding her concerns about the residents not receiving appropriate continuity of care because of not having the same employees regularly on staff, and had indicated herself that she was considering leaving if the staffing situation was not corrected. The employer assured her that it was taking action to fill the vacancies, and some of the vacancies had in fact been filled, but new vacancies had occurred.

On September 9, the claimant reported for her shift at 2:00 p.m. She noted that hers was the only name on the board for CNAs on the skilled unit. Normally there were two CNAs and two registered nurses (RNs) on the unit, plus usually a CNA from another unit covered six of the residents on the skilled unit. This evening, other than the claimant, there were only two RNs, and no back-up CNA from the other unit. She immediately noted this as a problem to the employer, which indicated that it was working on getting help, that it had just made a new contract with another temporary staffing agency because there was no one available with the usual staffing agency. After about a half hour, there was still only the claimant and the two nurses. The assistant director of nursing (DON) was also on the unit but she was busy orientating a new temporary CNA from the new staffing agency. At approximately 3:10 p.m., the claimant became very stressed, and began feeling light-headed and anxious. She stated to the nurses, within the hearing of the assistant DON, that she could not take it anymore, that she was leaving. She then gathered her belongings and left. She did not seek to return to her employment with the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether 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 24.25 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. The claimant did indicate her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684

(Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she 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 her. Iowa Code section 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). While the claimant's work situation was perhaps not ideal in the short term, she has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The employer was taking reasonably prompt steps to address the staffing problems; unfortunately, the claimant did not feel she could wait any longer for the situation to be resolved. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's September 28, 2004 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of September 9, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

ld/pjs