

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE HELMKE

Claimant

APPEAL NO: 09A-UI-15768-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHEFFIELD CARE CENTER

Employer

OC: 09-27-09

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 16, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 23, 2009. The claimant participated in the hearing. Chris Ruger, Administrator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNA for Sheffield Care Center from June 23, 2008 to September 20, 2009. On July 12, 2009, CNA Rhonda Simmons told Charge Nurse Amy Prowley she thought she smelled alcohol on the claimant when she arrived at work. Ms. Prowley called Administrator Chris Ruger and reported what Ms. Simmons told her and also stated she thought she smelled alcohol on the claimant too. They decided to send the claimant home and have her return the next day to talk to Ms. Ruger. The claimant called Ms. Ruger later that day and wanted to go to the hospital or police department and be tested for alcohol use. Ms. Ruger told her she could do so if she wanted to but it was not required. Later that week the claimant provided a negative blood test for alcohol dated July 12, 2009. Ms. Ruger believes the test was conducted two to three hours after Ms. Prowley called her. On September 19, 2009, the claimant changed the assignment sheet prepared by the charge nurse so she would be working on the south side rather than the north side where Ms. Simmons was assigned. Even though the employer did not make an effort not to schedule the claimant and Ms. Simmons at the same time in the same area they had not worked together since the July 12, 2009, incident. The charge nurse became extremely angry about the claimant changing the assignment sheet and the claimant said she would switch back. The charge nurse said the claimant and Ms. Simmons had to put aside their differences, take care of the residents and do their jobs. The claimant offered to go home and the charge nurse asked if she wanted to go home and the claimant said yes and the charge nurse said, "Then go home." The

claimant thought it was “stupid” for the charge nurse to be angry and decided she “wasn’t going to have her be on (the claimant) all night long” so she decided to go home. The claimant was convinced there would be a problem with Ms. Simmons even though the claimant did not plan to start anything. The claimant was scheduled to work with Ms. Simmons September 20, 2009, as well and after deciding to go home September 19, 2009, she went back to the charge nurse, who was talking to the DON on the phone, and said she would not be in September 20, 2009, either and was told she could not come back anyway. She did not talk to Ms. Ruger or the department manager about the situation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The employer’s policy states that some violations, including two no-call no-shows, refusal of a job assignment and walking off the job without permission are the most serious offenses. While the claimant was probably not drinking July 12, 2009, she did have at least two hours before her blood test showed a negative result for ingestion of alcohol. Ms. Simmons and the charge nurse thought they smelled alcohol on the claimant and as such Ms. Simmons had a duty to report it to the charge nurse and the charge nurse had a duty to report it to the DON. The employer sent the claimant home but did not take any further disciplinary action against the claimant. Although the employer did not make a conscious effort not to schedule the claimant with Ms. Simmons, they were not scheduled to work together again until September 19, 2009, at which time the claimant changed the assignment sheet so she would not be on the same side as Ms. Simmons. The charge nurse became very angry about the claimant’s decision to change the assignment sheet and effectively told her she needed to work with Ms. Simmons and do her job. The claimant thought it was “stupid” for the charge nurse to be angry and did not want to work with the charge nurse or Ms. Simmons because she did not want the charge nurse to take her anger out on her all night long. The charge nurse never suggested the claimant go home; instead it was the claimant who said, “I can go home,” and the charge nurse asked her if she wanted to go home and the claimant said she did and the charge nurse said, “Then go home.” The claimant assumed there would be a problem with Ms. Simmons if she worked with her but also said she did not plan to start anything with her. Instead she simply assumed Ms. Simmons was so unprofessional that it was unavoidable she would cause problems for the claimant without waiting to see if they could work together without incident. There is no evidence that the claimant and Ms. Simmons had problems working together prior to July 12, 2009, and again Ms. Simmons had a responsibility to report the fact she believed she smelled alcohol on the claimant. Not only did the claimant have no evidence there would inevitably be a problem with

Ms. Simmons September 19, 2009, she also assumed there would be a problem September 20, 2009, and told the employer she would not be in that day because Ms. Simmons was on the schedule in the same area with her. The employer considered her actions to be job abandonment. Not only did the claimant change the assignment sheet, she refused to work her scheduled hours September 19 and 20, 2009. Under these circumstances the administrative law judge must conclude the claimant voluntarily left her employment because she was dissatisfied with the work environment and that does not constitute good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

DECISION:

The October 16, 2009, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs