

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARLENE J SHEPHERD
Claimant

APPEAL NO: 18A-UI-05607-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOOT & ANKLE CLINICS
Employer

OC: 04/29/18
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 14, 2018 reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 15, 2018. The claimant participated in the hearing. Dr. David Wanner, Owner, participated in the hearing on behalf of the employer and was represented by Attorney Steven Gardner. Employer's Exhibit One was admitted into the record.

The parties waived notice of whether the claimant refused a suitable offer of work.

ISSUE:

The issue is whether the claimant voluntarily left her employment for 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 transcriptionist for Foot & Ankle Clinics from September 17, 2012 to April 12, 2018. She voluntarily left her employment due to a change in her contract of hire.

The claimant worked as a front office desk employee and transcriptionist. After Dr. King left the practice November 30, 2017, Owner Dr. David Wanner asked the claimant if she wanted to only work as the transcriptionist and the claimant indicated she did. Dr. Wanner suggested there would be enough work to keep the claimant busy. Dr. Wanner told the claimant it was "easier" to pay her by the hour than by the line but there was no discussion about a change in the claimant's pay and the claimant assumed her pay was going to remain the same. The claimant asked Dr. Wanner if she could work at home and he granted her request. The claimant began working from home in mid-December 2017.

The claimant noticed on her paycheck stub in early March 2018 that she was not receiving sick leave or vacation hours credited on her check and had not received any since January 1, 2018.

The claimant texted Dr. Wanner March 6, 2018, and asked why she was not receiving sick leave or vacation hours but he did not respond. The claimant called Dr. Wanner Monday, April 9, 2018, and they discussed the fact the claimant was no longer earning sick leave or vacation pay. Dr. Wanner stated most contract employees do not receive sick leave or vacation hours. The claimant had never been told the employer considered her a contract employee when she started working from home. The claimant said that by eliminating her sick leave and vacation pay, the employer was effectively paying her less money. She pointed out that since the beginning of the year, she was averaging 29.5 hours per week which was less than when she worked in the office. Dr. Wanner stated he paid her two days of vacation pay recently and the claimant said she requested vacation because she only received 10 hours of typing the week of March 22, 2018. She also noted that at that time, she had not been informed she was a contract employee without vacation or sick leave. She told Dr. Wanner she was requesting her sick leave and vacation pay or an increase in her wage per hour. Dr. Wanner indicated he needed to think about it. The claimant had not received a response by Thursday, April 12, 2018. Consequently, the claimant decided to go to the office to try to get this situation resolved with Dr. Wanner. During their meeting, he offered a compromise of 48 hours of vacation. The claimant had been receiving three weeks of vacation with six days of sick leave and seven paid holidays. The claimant observed that she would be making more than \$1.00 less per hour. She asked him if 48 hours was still his compromise and he said yes. The claimant pulled out her resignation form, signed it and gave it to Dr. Wanner, notifying him she was voluntarily quitting her job

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

The employer changed the claimant's status from employee to a contract employee and eliminated her vacation and sick leave, all without telling the claimant either before it made the decision to do so or after it stopped allowing her to accrue her sick and vacation pay. If the claimant had not questioned her pay stub she might not have had any information on this

situation until she became ill and needed to use sick leave or planned a non-refundable vacation. If the employer was going to make this change to the claimant's employment status, it should have at the very least *told* the claimant what it was doing and given her the choice of whether she wished to remain in his employ under the new contract of hire.

Inasmuch as the claimant would suffer a significant change in vacation pay and sick leaves as well as a change in her status as a covered employee to a contract employee, these changes are considered a change in her contract of hire. Consequently, benefits must be allowed.

The parties waived notice on the issue of whether the claimant refused a suitable offer of work.

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the offer of employment took place outside of the benefit year, meaning the claimant did not have a claim for unemployment insurance benefits at the time the offer of work was made.. Benefits are allowed.

DECISION:

The May 14, 2018, reference 01, decision is affirmed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn