

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NAHLA E ELMAKKI
Claimant

APPEAL NO. 10A-UI-03116-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 10/11/09
Claimant: Appellant (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Nahla Elmakki, filed an appeal from a decision dated February 16, 2010, reference 05. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 14, 2010. The claimant participated on her own behalf. The employer, Mosaic, participated by Habilitation Coordinator Dawn Stevenson, Associate Director Jen Zajicek, Director Support Managers Angie Haney and Sue Schalfant, and was represented by TALX in the person of Lynn Corbeil. Nancy Seel observed the proceedings but did not offer testimony.

ISSUE:

The issue is whether the claimant quit

FINDINGS OF FACT:

Nahla Elmakki was employed by Mosaic from November 2, 2009 until January 25, 2010 as a full-time direct support associate at Sherman House from 3:00 p.m. until 11:00 p.m. On January 14, 2010, she requested to either work a 7:00 a.m. to 3:00 p.m. shift or else go PRN. The employer initially told her there were no day shifts available but a day or two later one became vacant and Direct Support Manager (DSM) Sue Schalfant offered the position to the claimant. Ms. Elmakki agreed to transfer to Tiffin House beginning January 25, 2010, and she was put on the schedule. She was “float” between Tiffin and Mattern Houses.

On January 24, 2010, the claimant talked with Ms. Schalfant and said she had changed her mind and did not want to work at Tiffin House. She had heard from other workers it was a “hard house” to work in and she did not want to have to lift residents because she was pregnant. The DSM said no one did any individual lifting of residents because there was a Hoyer Lift, a mechanical device for lifting residents.

The day she was to start the morning shift at Tiffin she did not report at 7:00 a.m. as required. She contacted DSM Angie Haney and later Associate Director Jen Zajicek and stated again she would not work at Tiffin House because she was pregnant, she did not want to lift and it was a “hard house” to work in. There is no significant difference between Sherman House and Tiffin

House as far as the needs of the residents are concerned. Ms. Zajicek asked if she had a doctor's note restriction her lifting and she said she did not. The employer reassured her there was a Hoyer Lift to move any residents but she still refused to work at the assigned house.

The claimant wanted to go back to PRN but that was not available because she had accepted the full-time job on the day shift. She would have to put in another request for PRN and give a two-week notice and work at Tiffin in the meantime. She would also have to work at Tiffin House as a PRN worker from time to time. When Ms. Zajicek asked her if she was resigning and she said yes.

REASONING AND CONCLUSIONS OF LAW:

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(27) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

The claimant is considered a voluntary quit because she refused to do the work as assigned. She had requested, and was granted, day shift work but then refused to appear for her scheduled shift and scheduled duties at Tiffin House on January 25, 2010. Her assertion that she had a doctor's statement which excused her from doing any lifting has not been supported by any documentary evidence. The employer had no such statement on file and none has been provided for the hearing.

The claimant is obliged by the work rules to work where the employer assigns her. The work she was doing at Sherman House does not differ substantially from the work at Tiffin House except the claimant believed it was a "harder" house to work in. The record does not support this contention.

The administrative law judge did not find the claimant's testimony to be credible as she denied all knowledge she was to work at Tiffin House until January 24, 2010, even though Ms. Schalfant had told her a week in advance she would be trained for two hours at Tiffin House on the day the transfer became effective. In addition, the claimant denies she quit even though she admits she refused to work at her assigned job. For reasons which are not clear she expected the employer to automatically transfer her to PRN status as of January 25, 2010, even though she did not make a new application after declining the full-time day shift work.

The record establishes the clamant quit without good cause attributable to the employer and she is disqualified.

DECISION:

The representative's decision of February 16, 2010, reference 05, is affirmed. Nahla Elmakki is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css