

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET E PARRY
Claimant

APPEAL NO. 10A-UI-07916-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREENE COUNTY MEDICAL CENTER
Employer

OC: 04/25/10
Claimant: Appellant (5)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Margaret Parry filed a timely appeal from the May 28, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 13, 2010. Ms. Parry participated. Tammy Ford represented the employer and presented testimony through Linda Bills.

ISSUE:

Whether Ms. Parry separated from the employment for reason that would disqualify her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Margaret Parry was employed by Greene County Medical Center as a part-time certified nursing assistant from 2004 until February 17, 2010. Ms. Parry's immediate supervisor was Linda Bills, Long-term Care Director.

On February 17, 2010, Ms. Bills met with Ms. Parry and another nursing assistant in response to hearing from other staff that both were considering leaving the employment. Ms. Parry was upset because the employer had decided to assign her primary responsibility for bathing residents/patients. Bathing residents/patients had always been part of Ms. Parry's job duties, but other nursing assistants had assisted with the bathing responsibilities.

On February 17, Ms. Bills commenced her conversation with Ms. Parry and the other nursing assistant by saying that she had heard that the employees were upset and had been speaking to others about quitting the employment. Ms. Parry responded by saying that she was going to give her two-week notice. Ms. Parry then asked Ms. Bills if she remembered speaking to Ms. Parry about the patient bath situation and a plan to switch the bathing duties weekly. When Ms. Bills indicated she did not recall such a conversation, Ms. Parry said, "I knew you would say that." Ms. Parry then said, "I'm done, I've had it, I'm out of it." Ms. Parry then abruptly left the

meeting, clocked out and left the facility without speaking to anyone. Ms. Parry was scheduled to work until 3:00 p.m., but left before 2:00 p.m. without the employer's permission. Ms. Bills concluded Ms. Parry had quit the employment.

On February 18, Ms. Parry called in an absence by contacting the night nurse. Ms. Bills made multiple attempts to reach Ms. Parry. Ms. Parry called back in the afternoon in response to Ms. Bills' messages, but Ms. Bills had already left work for the day.

On February 19, Ms. Parry appeared at the workplace at what would have been the scheduled start of her shift. Ms. Bills was arriving for work at the same time. Ms. Bills asked Ms. Parry what she was doing. Ms. Parry said she was coming to work. Ms. Bills told Ms. Parry that Ms. Parry was no longer employed and had quit the employment on February 17. Ms. Parry denied that she had quit.

Greene County Medical Center was Ms. Parry's only base period employer.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence indicates that Ms. Parry voluntarily quit the employment on February 17, 2010 and that Ms. Bills reasonably concluded Ms. Parry had voluntarily quit when Ms. Parry summarily terminated her participation in the meeting that had just started. Ms. Parry indicated during the meeting that she was going to give her two-weeks notice of a quit. Ms. Parry made multiple remarks that a reasonable person would take as an indication that she was immediately quitting the employment. The remarks occurred simultaneously with Ms. Parry's early, unauthorized departure from the work place.

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.

The next question is whether Ms. Parry's voluntary quit was for good cause attributable to the employer.

871 IAC 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.

On the other hand, where a person voluntarily quits due to a personality conflict with a supervisor or quits rather than perform the assigned work as instructed, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(22) and (27).

The weight of the evidence indicates that Ms. Parry was hired to perform duties consistent with her nursing assistant certification. Assisting patients/residents with baths was within those duties. An increase with bathing duties coupled with a decrease in other duties would not constitute a significant change in the conditions of the employment. In any event, the evidence indicates that Ms. Parry voluntarily quit and cut short the discussion with employer regarding the bathing duties when the employer summoned her to a meeting specifically to discuss her concerns. The weight of the evidence indicates that Ms. Parry voluntarily quit due to personality conflict issues with Ms. Bills and because she did not want to perform her assigned duties.

Ms. Parry voluntarily quit the part-time employment without good cause attributable to the employer. Accordingly, Ms. Parry is disqualified for benefits based on wage credits earned through the employment with Greene County Medical Center until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Parry.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because Greene County Medical Center was Ms. Parry's only base period employer, there would be no other base period wage credits upon which to base unemployment insurance benefits. Thus, Ms. Parry is fully disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

DECISION:

The Agency representatives May 28, 2010, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs