

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY S WALLER
Claimant

CAPITOL RESOURCES INC
Employer

APPEAL 21R-UI-22290-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2R)

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations

STATEMENT OF THE CASE:

On June 3, 2021, claimant Kimberly S. Waller filed an appeal from the May 24, 2021 (reference 03) unemployment insurance decision that denied benefits based on a determination that claimant voluntarily quit her employment without good cause attributable to the employer. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Monday, December 6, 2021. Appeal numbers 21A-UI-20475-LJ-T, 21R-UI-22290-LJ-T, and 21R-UI-22292-LJ-T were heard together and created one record. The claimant, Kimberly S. Waller, participated. The employer, Capitol Resources, Inc., participated through witness Nicole Schlinger, Founder and President; and was represented by attorney Katelynn McCollough. Claimant's Exhibit A was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant voluntarily quit 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: Claimant began working for Capitol Resources, Inc., on January 22, 2018. Claimant worked full-time hours for the employer as a campaign representative in the Oskaloosa office. She last reported to work on March 17, 2020.

Claimant stopped reporting to work in March 2020 due to the emerging COVID-19 pandemic. She provided the employer with a series of doctor's notes excusing her from work for periods of time. (Claimant's Exhibit A) The last note indicates claimant was not permitted to work on July 6, 2020, until further notice.

On November 23, 2021, company vice president Chad Foster and office manager Nikki Reynolds called claimant to let her know the Oskaloosa office was closing. At that time, Foster and Reynolds notified claimant that she would be offered the same rate of pay and hours she previously worked at the employer's Brooklyn location once she was ready to return to work.

Claimant informed the employer that she would not go work in Brooklyn. When she applied, claimant specifically indicated that she was applying to work in the Oskaloosa office. Claimant mentioned during the hearing that she would not have been able to work in Brooklyn, as she did not have transportation to Brooklyn, which was 45 minutes away. She also testified that she did not want to go work in Brooklyn because that office was more confined than the office in Oskaloosa and posed more of a risk to her health.

At the time that claimant notified the employer that she would not go work in Brooklyn, she was still on a leave of absence from work. Claimant still has not returned to employment since opening her claim effective March 15, 2020, due to her ongoing health concerns.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was with good cause attributable to the employer. Benefits are allowed based on this separation.

Iowa Code §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.

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:

24.26(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 claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988).

In this case, when the employer's office in Oskaloosa closed, the only additional work available for claimant was in Brooklyn. Claimant did not have a vehicle of her own, and she specifically applied for work at the employer's office in Oskaloosa, which was four times closer to her than the office in Brooklyn. This change in location was certainly a substantial change in claimant's contract of hire. Benefits are allowed based on claimant's separation.

The issue of whether claimant is able to work and available for work (specifically with regard to her status in quarantine and her lack of transportation) effective November 22, 2020 (the week

of claimant's separation from employment) is remanded to the Benefits Bureau for determination.

The issue of whether claimant remains eligible for Pandemic Unemployment Assistance benefits is remanded for further examination, in light of this decision.

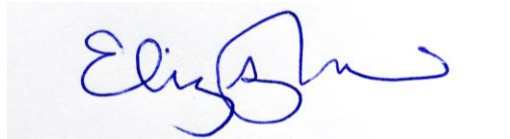
DECISION:

The May 24, 2021 (reference 03) unemployment insurance decision is reversed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

REMAND:

The issue of whether claimant is able to work and available for work effective November 22, 2020, is remanded to the Benefits Bureau of Iowa Workforce Development for determination.

The issue of whether claimant remains eligible for Pandemic Unemployment Assistance benefits she received is remanded for further examination, in light of this separation decision.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 7, 2022
Decision Dated and Mailed

lj/lj