

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JUANITA TORRES
401 – 10TH AVE
ACKLEY IA 50601**

**PUTCO INC
216 W 1ST ST
STORY CITY IA 50248**

**Appeal Number: 04A-UI-09378-LT
OC: 08-08-04 R: 02
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the August 27, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 11, 2004. Claimant did participate. Employer did participate through Ben Conkey, Jeff Cowell, Laura Lentz and Carlos Ruiz.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production worker from July 2003 through May 14, 2004 when she quit. When hired, employer advised claimant her working hours would be Monday through Thursday from 6:00 a.m. to 6:00 p.m. with some overtime the last week of the month. For the

first couple of months that schedule was followed. Then in the fall of 2003, employer added additional hours of mandatory overtime with short notice such that in December 2003, claimant complained to Al Dvorak, Supervisor, about the additional hours that would sometimes end as late as 9:00 p.m. and midnight. He indicated he would try to work on the issue. Dvorak did not participate in the hearing. There was another schedule posted about March or April 2004 which was not adhered to and the additional mandatory overtime with minimal notice continued such that claimant had to cancel doctors' appointments in order to accommodate employer. She continued to address her concerns to Dvorak and Mike Schmidt, Packaging Supervisor, to no avail and told them about two weeks prior to the separation that she was quitting because the continuing inconsistent hours and lack of overtime notice since December 2003 when employer assured her that attempts would be made to address her concerns. Schmidt did not participate in the hearing. She only told Jeff Cowell that she was going home to spend more time with her children in reference to getting a sufficient number of brackets for him on that shift before leaving and before her scheduled separation date arrived.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with 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.

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.

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

Claimant has met the requirements of Cobb by repeatedly bringing her concerns to two supervisors over a period of several months. Inasmuch as the claimant would continue to have mandatory overtime on short notice far beyond the terms by which she was hired, which caused her to miss medical appointments and encounter other scheduling problems, the change of the original terms of hire is considered substantial. Thus the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The August 27, 2004, reference 01, decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

dml/kjf