

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFERY L FISHER**  
Claimant

**APPEAL NO. 10A-UI-05982-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**Original Claim: 03-21-10  
Claimant: Respondent (2-R)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 15, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 10, 2010. The claimant did participate. The employer did participate through Darlene Brown, Human Resources Assistant, and Gary Ring, Supervisor of Laundry and Housekeeping.

**ISSUES:**

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a laundry aid, full-time, beginning December 20, 2005, through March 21, 2010, when he voluntarily quit.

The claimant voluntarily quit because he believed that his supervisor, Gary Ring, was harassing him or creating an intolerable work environment. The claimant worked the night shift in the laundry room. The employer runs a facility for mentally handicapped individuals, both men and women, who are unable to live unassisted.

The claimant became friends with Resident A, whom he met at the facility. On occasion, Resident A would go downstairs to the laundry room and sit and visit with the claimant while he performed his work duties.

Resident A complained to other staff members that the claimant was kissing her, touching her breasts, putting his hand down her pants and rubbing her when she visited him in the laundry room. The employer investigated. The claimant was told that Resident A was making accusations against him on more than one occasion by both Mr. Ring, his direct supervisor, and

by Eric Seitz, Facility Administrator. Resident A in the past has made false accusations against staff members. When Mr. Ring told the claimant of the accusations, he himself was not accusing the claimant of engaging in a relationship with Resident A, he was merely telling the claimant what Resident A was alleging.

In order to protect Resident A and to protect the claimant from false allegations, the employer instituted a rule that no residents could be in the laundry room from 8:00 p.m. until 6:30 a.m. Since the claimant often worked alone, this would prevent situations where the claimant was alone with Resident A without any one to witness their interactions. The employer was not obligated to provide friendship or support any friendship the claimant may have had with a resident while he was on duty working. In other words, the employer did not have to provide an opportunity for the claimant to visit with any of the residents while he worked.

Additionally, the employer requires that no employees purchase pop or candy or any food or gifts for the residents. This rule applied to all employees, not just the claimant. Resident A was alleging that the claimant was purchasing gifts for her and trying to pursue a romantic relationship with her. The claimant did purchase a Christmas gift for Resident A in December 2008, but has not since that time.

Since the accusations were made against the claimant, the employer also required that he not be on the floor collecting the laundry in the facility, but that others handle that responsibility. This also would prevent the claimant from being alone with Resident A. The claimant was never disciplined for any of Resident A's allegations, as there was never a finding by the employer that they were valid.

The claimant was disciplined for attendance violations. Other employees were also disciplined for attendance violations. The claimant was not treated any differently than any other employee with regard to the attendance policy. The claimant was also disciplined for violating the employer's smoking policy. The employer has a designated smoking area and the claimant admits that he often smoked in areas outside the facility where smoking was prohibited. The employer applied the smoking policy equally to all employees.

Claimant has received unemployment benefits since filing a claim with an effective date of March 21, 2010.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer.

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.

871 IAC 24.25(6), (21), and (22) provide:

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 § 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 § 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:

- (6) The claimant left as a result of an inability to work with other employees.
- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant was upset about the allegations made against him. The allegations were not made by the employer, but by a resident of the facility. The employer was obligated to investigate the claims made. By telling the claimant what was being alleged, the employer was not harassing the claimant, but putting him on notice, in part so he could protect himself from false allegations. In light of the very serious nature of the allegations made, the employer's rules about no residents in the laundry room and the claimant's presence on the floor were reasonable. Those rules not only protected Resident A, but also the claimant himself.

The claimant was disciplined for attendance violations and for smoking violations. He was not treated any differently than any other employee. The claimant has not established that the employer created an intolerable or harassing work environment. While the claimant's decision to quit may have been for good personal reasons, no good cause attributable to the employer has been established. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

- 7. Recovery of overpayment of benefits.
  - a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.
  - b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue

of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment may not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. If so, the employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

**DECISION:**

The April 15, 2010 (reference 01) decision is reversed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided he is otherwise eligible.

**REMAND:**

The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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