

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALYCIA A BESCH
Claimant

APPEAL NO. 10A-UI-07255-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SEQUEL YOUTH SERVICES OF
WOODWARD LLC**
Employer

**Original Claim: 04/18/10
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(28) – Leaving after a Reprimand
871 IAC 24.25(37) – Resignation
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated May 10, 2010, reference 01, that held the claimant voluntarily quit with good cause attributable to her employer on April 15, 2010, and that allowed benefits. A telephone hearing was held on July 7, 2010. The claimant participated. James Gilliam, Attorney; Marcia Dodds, HR Director; Glen Miller, Program Director; and Abby Cray, Education Director, participated for the employer. Claimant's Exhibit A and Employer Exhibits One through Seven were received as evidence.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began work for the employer as a substitute teacher on February 26, 2009, and she became a full-time teacher in June. The claimant received a satisfactory employee performance evaluation on February 5, 2010.

The claimant received written warnings for being late to work on February 3, and February 12, 2010. The claimant received a written warning on April 15 for failing to complete some reports and for badmouthing the employer. The claimant had some disagreements with her warnings, but she offered no written comments on any of the disciplinary forms.

During the meeting on April 15, Directors Cray and Miller advised the claimant that the employer received a teacher report she had made comments that Woodward Academy was unsafe, not caring about its kids, and going in the wrong direction. The claimant was suspended for the following day, and she was challenged to change her attitude about her job when she would

return to work on Monday, April 19. The claimant responded by submitting her written resignation, which the employer accepted.

The claimant has received unemployment benefits on her current claim.

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(28) and (37) 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 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:

(28) The claimant left after being reprimanded.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to her employer when she resigned on April 19, 2010 after receiving a reprimand.

The claimant's testimony and written statement do not establish that she was subjected to detrimental and/or intolerable working conditions. The claimant was dissatisfied with her job based on receiving written discipline that was merited based on employer testimony. The claimant never made any written comments on the disciplinary forms voicing any objection. The claimant never went to human resources to complain about any supervisor. What is fact is the claimant responding with her resignation following written discipline and a one-day suspension that was grounded on good cause.

Iowa Code section 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.

Since the claimant has received benefits, the overpayment issue is remanded to claims for a determination.

DECISION:

The department decision dated May 10, 2010, reference 01, is reversed. The claimant voluntarily quit without good cause due to her resignation on April 19, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw