

**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**

**JULIE HARMON  
BOX 240  
204 PEARL ST  
SHELLSBURG IA 52332**

**TANAGER PLACE & CAMP TANAGER  
2309 C ST SW  
CEDAR RAPIDS IA 52404**

**Appeal Number: 04A-UI-08610-DT  
OC: 07/11/04 R: 03  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Tanager Place & Camp Tanager (employer) appealed a representative's August 5, 2004 decision (reference 03) that concluded Julie Harmon (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 15, 2004. The claimant participated in the hearing and presented testimony from one other witness, Diana Dye. Kathy Krantz appeared on the employer's behalf and presented testimony from one other witness, Gayla Ohde. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on December 22, 2003. She worked full time as a registered nurse in the employer's in-patient section of its service for persons with personality disorders. Her last day of work was March 5, 2004.

When the claimant was hired, she was informed that she would be working some evenings, and she indicated that she could do second shift "on a limited basis." In the claimant's last two weeks of employment, she worked Mondays and Tuesdays from 8:00 a.m. to 4:30 p.m., Wednesdays and Thursdays from 12:00 p.m. to 8:30 p.m., and Fridays from 8:00 a.m. to 2:00 p.m. Her supervisor, Ms. Ohde, had the last schedule for the claimant's upcoming week of March 8, indicating the same schedule applied to that week.

On March 4, 2004, the claimant had a discussion with Ms. Ohde and expressed her desire to eventually get to strictly days. She indicated that she could not continue working if she had to work more than two evenings per week. The claimant then asserted that on March 5 she reported for work and saw that she was scheduled for some days until 10:30 p.m. and some days until 12:00 a.m., but she could not specify which days those were, nor did she provide evidence to establish that the schedule had been so changed in contrast with Ms. Ohde's statement that she had copies of all schedules and there was no schedule showing those hours for the claimant.

On March 8, 2004, the claimant was scheduled to begin work at 8:00 a.m. but called in sick. Later that afternoon, she called Ms. Ohde and left her a voice-mail message indicating that she was not returning to work because she "had a lot going on in her personal life," that she needed to focus on her family, and that as a result she was suffering from nerves that were making her physically ill. She made no reference whatsoever to any changes in the work schedule or that any problems were due to changes in the schedule.

The claimant established a claim for unemployment insurance benefits effective July 11, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,611.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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 24.25 provides that, 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 claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code Section 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). The claimant has not established that there was a substantial change in her terms of employment. 871 IAC 24.26(1). While the claimant's work situation was perhaps not ideal, she has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). Further, in order for a reason for a quit to be attributable to the employer, an individual who voluntarily leaves 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. Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996), Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant did not provide this notice and opportunity to the employer. The claimant has not satisfied her burden. Benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's August 5, 2004 decision (reference 03) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 8, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,611.00.

ld/s