

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TANIA Y CORTEZ
Claimant

APPEAL NO. 14A-UI-08421-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 07/20/14
Claimant: Respondent (2-R)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 7, 2014, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on September 4, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Bangone Chanthavong participated in the hearing on behalf of the employer with a witness, Sara Hoffer. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

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

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from October 2012 to July 10, 2014. In a letter the claimant received and signed when she was hired it states that:

As a condition of your employment with Stream Global Services, you will be expected to be available to work a variety of shifts seven days a week. You further understand that due to changing business needs you may be required to accommodate changes in your work schedule at short notice. Such changes may include but are not limited to, changes in the time of the day your shift begins and which days of the week you will be scheduled to work.

The employer periodically, due to business needs, requires employees to submit bids for the shifts they want to work. Employees are ranked in regard to seniority and attendance and client performance metrics. Bids are done in the order of the ranking.

When the claimant first started working for the employer, she was working a shift from 3:30 p.m. to midnight. Later, she bid and received a 10 a.m. to 7 p.m. shift. In January 2014, the claimant bid and received a shift from 9:30 a.m. to 5:30 p.m.

On July 10, 2014, the claimant was again required to bid for a shift. By the time of the claimant's bid, the only available shift was the 3:30 p.m. to midnight shift. The claimant did not have a high ranking due to attendance and performance issues. The daycare center for her child closed at 5:45 a.m.

The claimant complained about the shift change and informed her supervisor and human resources that it would not work with her daycare. The new schedule would not have gone into effect for two weeks, but the claimant resigned on July 15, 2014, due to the change in her shift.

The claimant filed for and received a total of \$1,063 in benefits from July 20 to September 6, 2014.

The employer's participants in the appeal hearing believed that witnesses were available for the fact-finding interview held on August 5, 2014, but they were not called.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

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.

The evidence establishes that at the time of hire, the claimant agreed that the job involved being available to work a variety of shifts seven days a week. She had worked various shifts and was familiar with the bid process. She had previously worked 3:30 p.m. to midnight shift. She was given two weeks to arrange for caring for her child but decided that only a daycare center would work for her child.

The evidence fails to show a willful breach of contract of hire or other good cause attributable to the employer. While the claimant's reasons for quitting are understandable, they do not meet the standard of good cause attributable to the employer in this case.

The unemployment insurance law generally requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. But a claimant is not required to repay an overpayment when an initial decision to award benefits on an employment-separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in

the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1,063 in benefits.

Because there is a dispute about whether the employer participated in the fact-finding hearing that can only be resolved by reference to documents that were not sent to the parties, the issue of whether the claimant is required to repay the overpayment and whether the employer's account is subject to charge for benefits is remanded to the Agency.

DECISION:

The unemployment insurance decision dated August 7, 2014, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She was overpaid \$1,063 in benefits. The issue of whether she is required to repay the overpayment and whether the employer's account is subject to charge for benefits is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css