

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACQUELINE MCGEE**  
Claimant

**APPEAL NO. 09A-UI-07744-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**Original Claim: 09/28/08  
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated May 13, 2009, reference 03, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 12, 2009. The claimant participated. The employer participated by Denise Krueger, director of nursing, and Glenna Pullan, assistant director of nursing. The record consists of the testimony of Jacqueline McGee, the testimony of Denise Krueger, the testimony of Glenna Pullan, Claimant's Exhibits A through H; and Employer's Exhibits 1 through 17.

**ISSUES:**

Whether the claimant voluntarily quit for good cause attributable to the employer.

Whether there has been an overpayment of benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired as a charge nurse for the employer, which operates a nursing home, on October 14, 2008. When the claimant applied for the job, she indicated that she was interested in a full-time position either on night shifts or day shifts. The employer did not have a full-time position available for either of those shifts, and so the claimant was given three night shifts and one evening shift, which ran from 2:00 p.m. through 10:00 p.m. The claimant was aware that shifts could be changed to meet the staffing needs of the facility.

A conflict arose between the claimant and another employee, a certified nursing assistant, named Reanna. Over a period of several months, the director of nursing and the assistant director of nursing had to be deal with problems the claimant and Reanna had working with each other. Reanna had no difficulty working with other members of the nursing staff, and when the director of nursing met with Reanna, she indicated that she was willing to work with the claimant. The employer had had other complaints from other employees about the claimant being bossy and rude and endeavored with work with the claimant to resolve concerns from other staff members.

On April 15, 2009, there was a meeting between the claimant and the director and assistant director of nursing after the claimant wrote up a charge of insubordination against Reanna for an incident that occurred on April 14, 2009. During that meeting, the problems with other staff members were discussed and the claimant was asked if she could continue to work with Reanna. The claimant did not know if she could. The claimant and Reanna were both scheduled to work on April 16, 2009, and Reanna was asked to remain at home and another nurse was scheduled to work instead of the claimant. The claimant then failed to come to work on April 19, 2009, and April 21, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

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(12), (18), and (21) 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:

(12) The claimant left without notice during a mutually agreed upon trial period of employment.

(18) The claimant left because of a dislike of the shift worked.

(21) The claimant left because of dissatisfaction with the work environment.

871 IAC 24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

The first issue that must be addressed is whether the claimant voluntarily quit for good cause attributable to the employer. The claimant alleges that she was in a hostile and detrimental work place and that she could not continue to work at the nursing home. In particular, she stated that she felt her nursing license was in danger, as she felt that there was improper care being given to the residents. She also felt that her agreement with the employer on the shifts she would work was being violated.

The evidence does not establish that the claimant voluntarily left her employment with good cause attributable to the employer. The main reason that the claimant decided to quit her job was her inability to work with another employee. The evidence showed that the claimant had difficulty working with other certified nursing assistants and nurses on the staff as well as Reanna. Despite many efforts on the part of the nursing staff to work out these problems, the claimant was resistant

to many, if not all, efforts to rectify the situation. The claimant did report some legitimate concerns about procedures in the nursing home, and the evidence showed that the nursing staff management did respond to those concerns.

There is also no evidence to suggest that the claimant was guaranteed certain shifts that she would work. She did acknowledge that she knew schedules could change due to staffing needs at the facility. Although she claimed to be upset that she was scheduled to work only nights in April 2009, there is no evidence to show that she made a specific complaint about that schedule to her employer prior to quitting.

Iowa law states that dissatisfaction with the work environment or the inability to work with other employees or dislike of the shift worked do not constitute good cause attributable to the employer. Accordingly, the claimant is not entitled to unemployment insurance benefits.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The representative's decision dated May 13, 2009, reference 03, is reversed. Unemployment insurance benefits shall be withheld until 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw