

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

JESSIMIAL STEINBACH
306 S COLUMBIA ST
BLOOMFIELD IA 52537-1807

COMFORT KEEPERS
J & J ENTERPRISES
407 CHURCH ST
OTTUMWA IA 52501

Appeal Number: 06A-UI-07434-BT
OC: 06/25/06 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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Comfort Keepers (employer) appealed an unemployment insurance decision dated July 18, 2006, reference 01, which held that Jessimial Steinbach (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 10, 2006. The claimant participated in the hearing. The employer participated through Sarah Lunsford, Manager. Claimant's Exhibit A and Employer's Exhibits One through Three were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time office assistant and caregiver for this non-medical in-home care agency on April 25, 2006. She became a full-time office manager on September 15, 2005. She received two raises in May and September 2005 and started receiving a bonus on March 26, 2006 for every hour the employer served, and the claimant scheduled, over 600 hours. The claimant took a week of paid vacation in April 2006 and during that same month, she advised the employer she was having problems handling all her duties. The employer began looking for help through Manpower and hired another full-time employee on May 9, 2006 while the claimant was taking an additional week of paid vacation.

The claimant called in sick on June 6 and 7, 2006. Later in the day on June 7, she called in and told the employer she was taking a two-week medical leave of absence due to stress she attributed to her job. She did not provide the employer with any medical documentation but reported that she was scheduled to return to work on June 21, 2006. The claimant did not return to work on June 21 and the employer called her and learned the doctor appointment had been moved to June 23, 2006. The employer heard nothing more from the claimant but sent her a letter on June 26, 2006 offering a care-giver position since the claimant found the other position too stressful. The claimant met with the employer on June 30, 2006 and stated that her doctor advised her not to take the caregiver position since it would be too much stress learning a new position. The claimant was originally hired as a caregiver so it was not a new position. The claimant told the employer her physician advised her to quit her employment but did not provide her with any medical documentation confirming that claim. At this time, she did provide the employer with the June 7, 2006 excuse.

After her separation, the claimant provided the employer with a letter dated July 3, 2006 and prepared by Dorothy Cline Campbell, D.O. Dr. Campbell wrote that she saw the claimant in her office on June 7, 2006 for extreme depression and anxiety due to "the level of stress she is experiencing as an employee of Comfort Keepers." Dr. Campbell never contacted or spoke with the employer and never visited the work site to evaluate the working environment. Dr. Campbell further wrote, "The patient is unable at this point to continue working for Comfort Keepers due to level of stress involved and her employer's lack of empathy." At the hearing, the employer objected to the reported "lack of empathy" and pointed to the numerous raises, gifts, additional help and offer of an entirely different job to the claimant to help alleviate any stress.

The claimant filed a claim for unemployment insurance benefits effective June 25, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

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.

Iowa Code § 24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant contends she was compelled to quit because of a medical condition that was attributable to the employment. She has not filed a worker's compensation claim and she failed to provide any medical documentation demonstrating she had to quit her employment prior to that act. The medical documentation provided subsequent to her separation was issued by a physician who attributed the claimant's medical condition to her work environment without speaking to the employer and without visiting the work environment.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). Even without medical documentation, the employer was willing to accommodate the claimant and initially hired another full-time employee to take away some of the claimant's job duties. The employer subsequently offered the claimant a different job. The claimant told the employer her doctor told her not to accept the caregiver position because the stress of a new job would be too much. First of all, the caregiver position was not a new job since that was the original position for which the claimant was hired and secondly, the claimant's physician only reported a recent visit of June 7, 2006 which was prior to the offer of the different position.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and the separation is not attributable to the employer. Benefits are denied accordingly.

Iowa Code § 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 unemployment insurance decision dated July 18, 2006, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has 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 \$990.00.

sda/cs