

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORETTIA F TEDFORD

Claimant

APPEAL NO. 15A-UI-03923-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOYS & GIRLS RESIDENTIAL TREATMENT

Employer

OC: 03/08/15

Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 27, 2015, reference 02, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on March 6, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on May 26, 2015. Claimant Loretta Tedford participated. Marit Westrich represented the employer. Exhibits Three, Four, Five and A were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies her for benefits.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Loretta Tedford was employed by Boys & Girls Home as a part-time housekeeper from 2012 until March 6, 2015, when she voluntarily quit in response to being reprimanded on March 5, 2015. Ms. Tedford's usual work hours were 5:00 a.m. to 9:00 a.m., Monday through Friday.

On March 5, the employer met with Ms. Tedford for the purpose of issuing written discipline for failure performed assigned duties and for performing unauthorized duties. The employer made clear during the meeting that Ms. Tedford was not discharged from the employment. Ms. Tedford was angered by the meeting. Before Ms. Tedford left work on March 5, 2015, she left her housekeeping keys in the housekeeping closet. The door to the housekeeping closet automatically locks when it closes. Ms. Tedford would usually take her housekeeping keys

home with her. She would need them to access the housekeeping closet. Later in the day on March 5, another housekeeper discovered Ms. Tedford's keys abandoned in the housekeeping closet and brought them to the attention of the employer the next morning. When Ms. Tedford did not appear for work the next morning, the employer concluded that Ms. Tedford had voluntarily quit and sent her notice that she needed to return any employer property that she still possessed. Ms. Tedford's only additional contact with the employer was on March 10, 2015, when she contacted the employer's receptionist to advise she had no employer property to return.

Ms. Tedford established a claim for benefits that was effective March 8, 2015 and received benefits. Ms. Tedford's weekly benefit amount is set at \$92.00. As of June 14, 2015, Ms. Tedford had received \$1,205.00 for the period of March 8, 2015 through June 20, 2015. Boys & Girls Residential Treatment Center is Ms. Tedford's sole base period employer. Marit Westrich, Human Resources Manager, represented the employer at the March 26, 2015 fact-finding interview.

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.

Iowa Admin. Code r. 871-24.25(28) provides:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

The weight of the evidence in the record established that Ms. Tedford decided to quit the employment after the disciplinary meeting that occurred on March 5, 2015. Mr. Tedford acted

on that intention by intentionally leaving her housekeeping keys in the housekeeping closet and by not appearing for work the next day or any day thereafter. Ms. Tedford made contradictory assertions during the hearing. On the one hand, she testified that she believed she was discharged at the time of the March 5, 2015. The evidence establishes there would be no basis for such a conclusion. The employer made it clear during that meeting that she was not discharged from the employment. On the other hand, Ms. Tedford asserts that she did not quit and was merely absent on March 6, 2015 due to illness and was too ill to contact the employer. Ms. Tedford at no time mentioned to the employer that she was ill on March 6, 2015 and the weight of the evidence does not support the belated assertion.

Ms. Tedford voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Tedford is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Because this employer is the sole base period employer, there are no other base period wages upon which reduced benefits might be based. Ms. Tedford is not eligible for reduced benefits.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have 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 section 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 \$1,205.00 for the period of March 8, 2015 through June 20, 2015. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The March 27, 2015, reference 02, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she 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 was overpaid \$1,205.00 for the period of March 8, 2015 through June 20, 2015. The claimant is required to repay the overpayment. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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