

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANINE M LEES

Claimant

APPEAL NO: 07A-UI-10588-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN OCCUPATIONAL HEALTH

Employer

**OC: 10/14/07 R: 04
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

American Occupational Health Management (employer) appealed a representative's November 8, 2007 decision (reference 01) that concluded Jeanine M. Lees (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 6, 2007. The claimant participated in the hearing. Laurel Gooden appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. 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.

ISSUES:

Did the claimant voluntarily quit her employment or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on March 30, 2006. The claimant worked as a full-time registered nurse. Sandra Atkinson supervised the claimant.

In May 2007, the employer told the claimant there were problems with her work performance. Atkinson explained the problems and told the claimant they would meet in five weeks to discuss the claimant's progress about improving or correcting her work performance. On August 30, the employer gave the claimant a corrective action form. The claimant received this warning because the employer had not noticed any improvement with the accuracy of the claimant's reports and charting. These were the same problems the employer told the claimant about in May. The August 30 warning indicated the employer would follow up in two weeks to check on the status of the claimant's performance of her reports and charting. The employer warned the

claimant that further problems or her failure to improve could result in her termination. (Employer Exhibit One.) The claimant declined to sign the written warning.

After the employer gave the claimant the written warning, the claimant asked if she could have more than two weeks before the employer re-evaluated her performance. The employer declined to give the claimant more two weeks to evaluate her performance again.

The claimant submitted her written resignation on September 4, 2007. (Employer Exhibit Two.) The claimant's last day of work was September 27, 2007.

The claimant established a claim for unemployment insurance benefits during the week of October 14, 2007. She filed claims for the weeks ending October 20 through December 1, 2007. The claimant reported earning the following weekly wages: \$640.00, \$510.00, \$674.00, \$700.00, \$626.00, \$267.00 and \$656.00. Based on wages the claimant reported she had earned during these weeks, the claimant received partial benefits for the week ending November 24. For this week she received \$166.00 in benefits. The other weeks the claimant made too much money and was considered fully employed.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. Before the employer gave the claimant the written warning or talked to her about the written warning with Gooden on the phone, the claimant asserted Atkinson told her she could quit or the employer would discharge her. It does not make any sense for the employer to give the claimant a written warning about problems with her work performance and evaluate her again in two weeks, if the employer intended to discharge the claimant on August 30. The employer may have told the claimant that if she did not show any improvement in the next two weeks she would have to decide if she wanted to resign or be discharged. But it does not make any sense for the employer to tell the claimant she would be evaluated in two weeks if the employer wanted to end the claimant's employment on August 30. It is logical that the claimant understood she would be discharged because she did not believe she could improve her work performance or the necessary changes the employer wanted her to make. The law presumes the claimant quits without good cause when she leaves after being reprimanded. 871 IAC 24.25(28).

A preponderance of the evidence does not establish that the employer intended to discharge the claimant on August 30. Instead, on August 30, the employer gave the claimant a written warning and informed her that her job was in jeopardy because of her unsatisfactory performance. The claimant knew she could be discharged if she did not improve her performance within two weeks. The claimant decided to submit her resignation because she did not believe she could make the necessary improvement in two weeks and the employer would allow her to work more than two weeks without another evaluation. For unemployment insurance purposes, the claimant voluntarily quit her employment for compelling reasons or having being reprimanded. The claimant quit for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of October 14, 2007. This disqualification remains until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits

for the week ending November 24. As a result, she has been overpaid \$166.00 in benefits she received for this week.

The claimant earned ten times her weekly benefit, \$347.00, as of December 2, 2007. This means that while the claimant was not legally entitled to receive benefits from October 14 through December 1, she has since requalified by earning at least \$3,470.00. As of December 2, 2007, the claimant is no longer disqualified from receiving benefits based on the reasons for her employment separation with the employer.

DECISION:

The representative's November 8, 2007 decision (reference 01) is reversed. The employer did not force the claimant to resign or even intend to discharge the claimant on August 30. Instead, the claimant voluntarily quit her employment on September 4 for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of October 14, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. As of December 2, 2007, the claimant has earned requalifying wages and is potentially eligible to receive benefits based on the reasons for employment separation with the employer. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the week ending November 24 and has been overpaid \$166.00 in benefits for this week.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs