

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADRIANE CARSTENS**  
Claimant

**APPEAL NO: 12O-UI-05658-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COLLEGE COMMUNITY SCHOOL DISTRICT**  
Employer

**OC: 01/22/12**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

College Community School District (employer) appealed an unemployment insurance decision dated March 16, 2012, reference 01, which held that Adriane Carstens (claimant) was eligible for unemployment insurance benefits because. This matter was scheduled for hearing on April 7, 2012 but no hearing was held because the employer/appellant did not participate. Administrative Law Judge Marlon Mormann upheld the fact-finding decision in appeal 12A-UI-02694-MT. The appellant appealed the decision, indicating it did not participate due to lack of notice. The Employment Appeal Board remanded for a new hearing in an order dated May 10, 2012. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 11, 2012. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted and, therefore, did not participate. The employer participated through Director Sandra McCain and Assistant Director Jenny Pettigrew. Employer's Exhibits One through Four were admitted into 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.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The employer is a daycare with approximately 50 employees and they care for approximately 350 children from birth to six years old. The employer provides a before and after school program for the school age kids. The claimant was employed as a full-time office assistant/school age lead from May 11, 2009 through January 26, 2012. The school age lead is required to work in various classrooms where there is a need, so the lead's duties change frequently but the hours remain the same.

The claimant quit on January 26, 2012, when she walked off the job. She left for lunch and then sent a text message to the assistant director stating she quit. The claimant had prepared a written resignation which she left on her desk. She quit because she did not like the "constant switching of her schedule," but the schedule switching was part of her job duties. The claimant also said she felt like she was "treated like a dog," which resulted from her having difficulty taking directives from a co-employee.

The fact-finding notes indicate the claimant was upset about vacation but that was never mentioned to the employer. The claimant had used all ten days of her vacation but wanted to take an additional 5.5 days of unpaid vacation. The employer asked her to reduce it to maybe two days but the claimant only reduced the request to 4.5, so the employer had to deny it.

The claimant filed a claim for unemployment insurance benefits effective January 22, 2012 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 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.

The claimant quit her employment on January 26, 2012. She failed to participate in the hearing and there is no evidence establishing her separation was with good cause attributable to the employer. The previous decision indicated the claimant quit due to intolerable working conditions. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code § 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

The evidence provided by the claimant does not rise to an intolerable or detrimental work environment. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973). The claimant failed to meet her burden and benefits are therefore denied.

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 unemployment insurance decision dated March 16, 2012, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw