

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KATIE R LIND**  
Claimant

**PINNACLE HEALTH FACILITIES XVII LLC**  
Employer

**APPEAL 16A-UI-09794-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/25/15**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 29, 2016, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 26, 2016. The claimant participated personally. The employer participated through Randy Sparks, administrator. No testimony was taken at the hearing. The hearing was continued to allow receipt of exhibits and both parties again participated in the hearing on September 27, 2016. The claimant's exhibit A and employer exhibit 1 were admitted into the evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, 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 the employment with good cause attributable to the employer?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a marketing and admissions director, and was separated from employment on August 10, 2016, when she voluntarily quit the employment without notice. Continuing work was available.

Prior to separation, the claimant went on an approved personal leave of absence. The claimant had fifty five hours of sick and vacation time that she intended to apply towards her leave of absence. The claimant reported that she filled out the requested form seeking pay, in the amount of fifty five hours at a rate of \$22.14 = \$1,217.70. The claimant needed her manager, Randy Sparks, to sign the request to approve the payment for payroll processing. Prior to

leaving, Mr. Sparks reminded her to submit the form to him for signing. On July 6, 2016, the morning the claimant left for her leave, she was unable to meet with Mr. Sparks, who was tied up in a meeting. Instead of giving the form to Mr. Sparks directly, she met with Brandy, who was the acting human resources officer, and who stated she would give Mr. Sparks the form. The claimant believed the form would be signed and processed. When the claimant visited the employer for two hours on July 20, 2016, Mr. Sparks, nor any member of the employer, confronted the claimant about her request for leave payment, or the fact she had not asked Mr. Sparks personally to sign it, and that it would be denied. Throughout the claimant's month long leave of absence, no one notified the claimant her form had been denied. Mr. Sparks denied knowing the form had been submitted for request until August 1, 2016, when corporate payroll contacted him. He denied the request, because the claimant had not submitted it to him for signing. When the claimant contacted payroll to verify she would be paid on August 5, 2016 for a period of her leave of absence, she was informed that Mr. Sparks had cancelled the request (Claimant exhibit A). It was not until returning from leave of absence, that on August 9, 2016, Mr. Sparks signed the request, which would have been paid out August 19, 2016. The claimant felt Mr. Sparks intentionally withheld her pay, and voluntarily quit.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,389.00, since filing a claim with a separation date of August 29, 2016. The administrative record also establishes that the employer did not participate in the fact-finding interview. The employer's agent, Thomas & Company, submitted a written statement on behalf of the employer, in lieu of participation, containing the explanation, "the claimant resigned from the position without notice to return to school to further their education."

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

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 Admin. Code r. 871-24.26(4) and (3) 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.

(3) The claimant left due to unlawful working conditions.

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. "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973). 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the claimant who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record establishes intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice.

In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942). Based on the evidence presented, the administrative law judge is persuaded that Mr. Sparks knew or should have known that the claimant had submitted her form for pay while on leave of absence, in advance of her absence. The claimant made a good faith effort to complete and submit the form prior to beginning her leave of absence, and gave it to human resources, who agreed to share it with Mr. Sparks for approval. Mr. Sparks' decision to intentionally cancel the request in response to the claimant not bringing the form directly to him, even though he was unavailable in the meeting, is unsettling.

The administrative law judge is further persuaded that Mr. Sparks knew the claimant was expecting to be paid while on leave after completing her form, and had the opportunity to confront her if he had not received it when she left, on July 20, 2016 when she visited the facility, or prior to telling payroll to reject the request on August 1, 2016. Mr. Sparks' response that the rejection was due to her leaving the form with human resources and not him personally is unpersuasive. Had the claimant intentionally bypassed the chain of command or avoided Mr. Sparks on the day she left, he could have signed the form, and then addressed her with the appropriate discipline upon her return, if necessary. The administrative law judge finds that Mr. Sparks' willful withholding of the claimant's pay, until she returned from her leave of absence, and his intentional refusal to notify her that her request had been rejected, created an intolerable work environment for the claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

Because the claimant is eligible for benefits, the issues of overpayment and relief from charges are moot.

**DECISION:**

The August 29, 2016 (reference 02) decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The claimant has not been overpaid benefits. The employer's account is not relieved of charges.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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