

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA M BURGESS
Claimant

APPEAL NO. 12A-UI-04265-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARTIN HEALTH SERVICES INC
MARTIN HEALTH SERVICES
Employer

OC: 03/04/12
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

Martin Health Services Inc. filed a timely appeal from a representative's decision dated April 6, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on May 8, 2012. The claimant participated. The employer participated by Ms. Tina Moeller, Company President; Mr. Tracy Meyer, Business Manager; and Ms. Amanda Kuhmann. Employer's Exhibit One, Two and Three were received into evidence.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Jessica Burgess was employed by Martin Health Services Inc. from September 19, 2007 until March 2, 2012 when she voluntarily left employment. Ms. Burgess worked as a full-time computer entry technician and was paid by the hour. Her immediate supervisor was Jason Fryberg.

Ms. Burgess left her employment on Friday, March 2, 2012 at approximately 9:30 a.m. due to dissatisfaction with the work environment and because of a rumor that had recently been circulated in the office environment. The claimant had met with the company president on February 29, 2012 and at that time the company president had agreed to investigate the matter but was not willing to hold a meeting with all employees at that time about the issue.

On March 2, 2012 Ms. Burgess became upset and packed a majority of her belongings and left without being instructed to do so or obtaining authorization to leave. Because the claimant had previously given notice of her intention to leave the employer reasonably concluded that Ms. Burgess had chosen to voluntarily relinquish her position with the company.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

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.

871 IAC 24.25(6) and (21) provide:

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:

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

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 608, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992).

An individual who voluntarily leaves their employment must first give notice to the employer of their reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An individual who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). Claimants are not required to give notice of an intention to quit due to intolerable or detrimental working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2000). The test as to whether the claimant has left due to intolerable or detrimental working conditions is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 33 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

In this matter Ms. Burgess brought to the attention of company management an issue about rumors in the workplace on February 29, 2012. The employer reasonably agreed to investigate the matter but did not agree to an employee-wide meeting about the issue. On Friday, March 2, 2012 Ms. Burgess became upset when the matter was mentioned to her by another employee and voluntarily left employment by leaving the workplace prior to the end of the work shift without authorization and removing a majority of her personal belongings. The evidence in the record does not establish that the claimant was instructed to leave or that the claimant attempted to return to work and told that she was discharged.

While the claimant's reasons for leaving may have been good from her personal viewpoint but they were not good-cause reasons attributable to the employer. The employer acted reasonably in agreeing to investigate the matter and the evidence suggests that Ms. Burgess rekindled the issue of the rumor herself before leaving on March 2, 2012 while work continued to be available to her. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated April 6, 2012 reference 01, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, and is otherwise eligible. The issue of whether

the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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