

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE L BACKOUS
Claimant

APPEAL NO. 11A-UI-16061-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANKENY HEALTH CARE ENTERPRISES
Employer

**OC: 11/13/11
Claimant: Respondent (4-R)**

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 7, 2011, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on January 19, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Carl Koedam participated in the hearing on behalf of the employer. Exhibits 1, A, and B were admitted into evidence at the hearing.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full-time for the employer as activities director in the employer's long-term care facility from February 20, 2006, to October 27, 2011. When she was hired, her workweek was Monday through Friday.

In September 2010, the claimant made a request to the administrator of the facility, Greg Fredrich, to change to a four-day workweek, from Monday through Thursday, so that she could attend college to obtain a degree in occupational therapy. Fredrich agreed to change the schedule to a four-day workweek to accommodate the claimant's work schedule. The claimant worked that schedule from September 2010 through October 27, 2011.

In February 2011, Carl Koedam became the administrator. On October 3, 2011, Koedam informed the claimant that he was requiring her to work a five-day workweek starting January 1, 2012. The claimant objected to the change, but Koedam insisted that she work the five-day schedule. On October 5, the claimant gave Koedam her two-week notice that she was quitting effective October 27. Work would have been available for the claimant on a four-day workweek basis until January 1, 2012, but she quit before January 1, because she felt Koedam was unfair

in not honoring the agreement she had made with the prior administrator. She also was dissatisfied with not receiving her annual review in February 2011, which would have been the time for a pay raise. The claimant, however, received her pay raise retroactive to February before she resigned.

The claimant filed for and received a total of \$2,324.00 in unemployment insurance benefits for the weeks between November 13 and December 31, 2011. The claimant was approved for department-approved training (DAT) for the period from November 19, 2011 to December 31, 2011, and January 7 to March 21, 2012.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

871 IAC 24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The employer argues that the claimant did not have an employment contract, and when she was hired, she was working a five-day workweek. I interpret the statute and the rule to consider the terms and conditions of employment agreed on by the parties to create the employment contract. The claimant and the former administrator agreed that the claimant would be allowed to work a four-day work week to accommodate her school schedule. Koedam unilaterally reneged on the agreement. I conclude this was a substantial change in the employment agreement. Also, 871 IAC 24.26(1) only provides examples of situations in which good cause attributable to the employer can be established. Even in the absence of the rule, I would conclude the employer reneging on an agreement regarding the claimant's work schedule provided good cause attributable to the employer for quitting.

The problem here is that the change in the claimant's schedule was not to take effect until January 1, 2012, and the claimant could have worked under the same schedule as she had worked before until the date. I conclude the claimant was ineligible for benefits up until January 1, 2012. This is analogous to a situation where a claimant leaves employment before the effective date of scheduled layoff. Under the rules, such a claimant is ineligible until the scheduled date of the layoff because she could have worked up until then. See 871 IAC 24.25(40). I cannot conclude the claimant had good cause to quit before January 1, 2012.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or

willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Finally, the law provides that an employer's account shall not be charged for any benefits paid while a claimant is in department-approved training. Iowa Code § 96.4-6-a. As a result, any benefits paid to the claimant while she has been in approved training are not charged to the employer.

DECISION:

The unemployment insurance decision dated December 7, 2011, reference 01, is modified in favor of the employer. The claimant is ineligible for benefits from November 13 through December 31, 2011, but is eligible for benefits effective January 1, 2012. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency. Benefits paid to the claimant while she is in approved training shall not be charged to the employer.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw