

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TRISHA A HYTREK
PO BOX 95
AVOCA IA 51521-0095

CARE INITIATIVES
c/o TALX
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 06A-UI-07325-HT
OC: 06/18/06 R: 01
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated July 14, 2006, reference 01. The decision allowed benefits to the claimant, Trisha Hytrek. After due notice was issued, a hearing was held by telephone conference call on August 8, 2006. The claimant participated on her own behalf. The employer participated by Administrator Kelly Jimmerson and was represented by TALX in the person of Lynn Corbeil. Exhibits One and Two were admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Trisha Hytrek was employed by Care Initiatives from June 6, 2005 until June 16, 2006. She was a full-time certified nursing assistant (CNA).

On June 14, 2006, the claimant appeared for work for her 10:00 p.m. until 6:00 a.m. shift. She overheard two co-workers discussing her and wondering how, since she had called in absent so many times, she had avoided being fired. Ms. Hytrek lost control of her temper and informed them she was "right here," and then called her husband to come pick her up immediately. She did not have permission from a supervisor to leave, but as she walked away from the nurses' station she said, "my father is more important than this fucking place." She slammed the door to the break room so hard it damaged the wall.

When her husband came to pick her up, Ms. Hytrek re-entered the facility because she had forgotten her cigarettes. At that time the charge nurse was already on the telephone to Administrator Kelly Jimmerson. The claimant talked to Ms. Jimmerson and said she would not be working her scheduled shift and was allowed to go home. Later the administrator called her and set up a meeting for the early morning of June 16, 2006.

At that meeting the claimant was issued a final written warning for her conduct on June 14, 2006, and she then complained about her co-workers. The administrator had already taken statements from them and counseled them that their comments were unacceptable and unprofessional. Ms. Jimmerson then talked to the claimant about her personal problems, her father's illness, her frequent absences from work and how she had jeopardized her certification by leaving without permission on June 14, 2006, and only the fact she had returned to get her cigarettes and talked to the administrator had saved that.

Ms. Jimmerson also said she thought the claimant was on the verge of a nervous breakdown because of the various problems in her personal life and suggested she might want to take advantage of the employee assistance program, and asked if she needed some "time off" to help her deal with these problems. She also asked if Ms. Hytrek intended to work that evening and she needed to let the employer know if she was not so a substitute could be found.

A few hours after the meeting, the claimant notified Ms. Jimmerson that she was quitting to "take care of" her life, and "get control of things" as there was "a lot going on." Continuing work was still available to her had she not resigned.

Trisha Hytrek has received unemployment benefits since filing a claim with an effective date of June 18, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant quit work for reasons which would disqualify her from receiving unemployment 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.

Trisha Hytrek had many personal issues which were causing her stress. Her father's health and some physical problems of her own made for a stressful personal life. However, there is nothing in the record to establish the work environment was overly stressful. The administrative law judge does not doubt that it was hard for the claimant to hear her co-workers speculating on why she was not fired for missing so much work. When she complained to the administrator the employees were counseled about their inappropriate remarks.

The claimant was not being fired, but the employer did acknowledge her personal situation was causing her problems and offered her time off and a referral to the EAP. The claimant elected to quit rather than accept either of these solutions. Her decision to quit may be for good personal cause but does not constitute good cause attributable to the employer. The claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of July 14, 2006, reference 01, is reversed. Trisha Hytrek is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,617.00.

bgh/cs