

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOE L KOMAREK
Claimant

APPEAL NO. 12A-UI-07697-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05/27/12
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Care Initiatives filed a timely appeal from an unemployment insurance decision dated June 18, 2012, reference 01, that allowed benefits to Joe L. Komarek. After due notice was issued, a telephone hearing was held July 18, 2012. Although Mr. Komarek had provided a telephone number, he declined to participate when called at the time of the hearing, stating that he had begun new work. Administrator Rochelle Thompson and Housekeeping Supervisor Bonnie Provenzano testified for the employer, which was represented by Bill Stasek of TALX UC eXpress. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Joe L. Komarek was employed full-time as a housekeeper by Care Initiatives from October 7, 2011, until he resigned May 29, 2012. He told administrator Rochelle Thompson that he could not work with housekeeping supervisor Bonnie Provenzano, because she had been getting on him that day. Ms. Provenzano had on several occasions reminded Mr. Komarek of a task assigned to him the previous day that he still had not completed. Further work was available had he not resigned. He has received unemployment insurance benefits since filing a claim effective May 27, 2012.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. It does not.

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 has the burden of proof. See Iowa Code section 96.6-2. An individual who resigns after being reprimanded is disqualified for unemployment insurance benefits. See 871 IAC 24.25(28). An individual is disqualified after resigning because of dissatisfaction with the work environment or because of a personality conflict with a supervisor. See 871 IAC 24.25(21) and (22). The evidence in this record establishes that the employment ended under circumstances contemplated by these rules. 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.

The question of whether the claimant must repay the benefits he has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated June 18, 2012, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw