

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIE THORPE
Claimant

APPEAL NO: 06A-UI-10644-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM HEALTH OF IOWA INC
Employer

OC: 07-30-06 R: 01
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 26, 2006, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 15, 2006. The claimant participated in the hearing. Melissa Mesenbrink, Unit Manager, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time home health aide/homemaker for REM Health of Iowa from April 24, 2003 to October 2, 2006. On September 27, 2006, the claimant called the office and said she needed the afternoon of Friday, September 29, 2006, off work to attend a local homecoming parade. The employer's policy requires employees to make requests for time off by the 15th of the previous month or find their own replacement. If they are unable to find a replacement they receive a written warning. The employer told the claimant September 27, 2006, to find a replacement worker and if she could not do so she should let the employer know. On September 28, 2006, the claimant called the employer and said no one was returning her calls and the employer indicated it would try to find a replacement but the claimant should call back and verify coverage. The claimant called the employer at 11:49 a.m. September 29, 2006, and asked who was covering her client. The employee that does the scheduling was not present but the person who answered the phone checked the schedule and told the claimant there was no one scheduled to replace her but the schedule had not been updated and she would have the scheduler call her when she returned. The claimant did not hear from anyone by noon so she assumed her client was covered and went to the parade. On Monday, October 2, 2006, Unit Manager Melissa Mesenbrink met with the claimant to discuss the

situation and issued her a written warning. The claimant became upset and said she was “not putting up with this crap” any longer and left. Ms. Mesenbrink asked her to come back to talk about the incident but the claimant continued walking. Approximately 30 seconds later she called the employer and said it needed to cover the remainder of her clients because she “had enough of the bullshit” and was not coming back to work for the employer.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant may have had a right to be upset about the written warning issued by the employer October 2, 2006, because it may have stemmed from a misunderstanding, her reaction to the warning was not professional or appropriate. The claimant said she was not going to put up with “this crap” any longer and left, refusing to return even as the employer asked her to do so in order to further discuss the situation. She then called the employer and said the employer needed to cover the rest of her schedule because she “had enough bullshit” and was not coming back. “Good cause” for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). Even assuming the warning was the result of a misunderstanding and everything the claimant said about the employer covering her shift was true, she has not demonstrated that her decision to voluntarily leave her employment rises to the level of good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The October 26, 2006, reference 03, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$353.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs