

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GEORGIA D MCAFEE**  
Claimant

**APPEAL NO. 09A-UI-00001-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**OC: 11-30-08 R: 04**  
**Claimant: Respondent (2R)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 26, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 14, 2009. The claimant did participate. The employer did participate through Amber Glasscock, Program Director. Employer's Exhibit One was received.

**ISSUES:**

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

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a unit coordinator full time beginning March 30, 2001 through October 26, 2008 when she voluntarily quit.

The claimant was called into a disciplinary meeting on October 9, 2008 with her supervisor Amber Glasscock. During the meeting Ms. Glasscock discussed with the claimant that she had not been holding monthly staff meetings, nor had the claimant been working all of the direct care hours she was required to work. Ms. Glasscock also discussed the complaints made by staff persons, including Michelle who worked for the claimant. At no time did Ms. Glasscock tell the claimant she would be demoted or that she could no longer work as the unit coordinator. The claimant admitted that she had not been working all of the direct care hours she should have been and that she had never held monthly staff meetings. Ms. Glasscock was willing to work with the claimant to help her with any problems with any employees she supervised, but the claimant chose to quit instead of continuing to work. Continued work as the unit coordinator was available to the claimant.

Claimant has received unemployment benefits since filing a claim with an effective date of November 30, 2008.

**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 § 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), (28) provides:

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 § 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 § 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.

(28) The claimant left after being reprimanded.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

The claimant could have continued working if she so chose. The employer did not demote the claimant nor tell her she would be demoted. The employer wanted the claimant to continue as unit director and to work on issues she had with her staff. The claimant disliked the idea of continuing to work with Michelle. The reprimand given to the claimant was legitimate on many counts, including the claimant's failure to hold staff meetings and her failure to work all of her direct care hours. While the claimant may not have liked Michelle, it was her responsibility to supervise her. There is no evidence that Michelle or any of the other staff members lied to Ms. Glasscock when they made their complaints about the claimant.

The claimant's decision to quit because she no longer wanted to work with Michelle and because of the reprimand give to her on October 9 were not good cause reasons attributable to the employer for leaving the employment. Benefits are denied.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. The unemployment insurance law provides that benefits must 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 not eligible for those benefits. The matter of determining whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

**DECISION:**

The December 26, 2008, reference 01, 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. Claimant is overpaid benefits in the amount of \$2,103.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs