

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY A HANSEN
Claimant

APPEAL NO: 07A-UI-09865-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID-STEP SERVICES INC
Employer

**OC: 08/05/07 R: 01
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Mid-Step Services, Inc. (employer) appealed a representative's October 23, 2007 decision (reference 08) that concluded Nancy A. Hansen (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 7, 2007. The claimant participated in the hearing. Jan Hackett appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant applied for work with the employer's service for persons with mental and physical challenges on August 22, 2007. She indicated she was available for work on any shift. On or about September 11 she was offered and accepted a job as a full time residential living assistant on the first shift, to work 5:30 a.m. to 1:30 p.m. five days per week, including at least one weekend day. She reported for her first day of work on October 1, 2007, which was her orientation day and for which she worked 6.25 hours beginning at approximately 8:00 a.m. She was to work the remainder of the week, Tuesday October 2 through Saturday October 6, on the 5:30 a.m. to 1:30 p.m. schedule.

On October 2 and October 3 the claimant called in absences due to caring for her mother who had suffered a stroke. She intended on returning to work on October 4. However, she then discovered that her assumption that there was bus service to the employer's work site at least at one end of the shift was incorrect. She therefore did not report to work on or after October 4, nor did she call. On or about October 19 she came to the employer's office to pick up her paycheck for her work October 1 and explained that she had not reported back to work due to the transportation issue.

The claimant established a claim for unemployment insurance benefits effective August 5, 2007. The claimant has received credit or payment of unemployment insurance benefits after the separation from employment in the amount of \$555.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for 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 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The intent to quit can be inferred in certain circumstances. For example, a three-day no-call, no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). Likewise, failing to report for assigned work when the claimant had not been informed of a discharge is deemed to be a voluntary quit. 871 IAC 24.25(27), (33). The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving employment due to a loss of transportation or the distance to work when the distance and work schedule was known at the time of hire is not good cause. 871 IAC 24.25(1), (30). A person who quits employment without good cause attributable to the employer must be disqualified from further benefits even if that person has given up unemployment insurance benefits to accept the work which was then considered unsuitable. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). The claimant has not satisfied her burden. Benefits are denied as of the week ending October 6, 2007.

Iowa Code § 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 representative's October 23, 2007 decision (reference 08) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of October 4, 2007, benefits are withheld until such time as the claimant 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 \$555.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs