

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARGARET A BARVINEK**  
Claimant

**APPEAL NO. 12A-UI-07522-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREATER CR & MARION HOME  
BUILDERS ASSN**  
Employer

**OC: 01/29/12**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Greater Cedar Rapid & Marion Home Builders Association filed a timely appeal from a representative's decision dated June 14, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on July 17, 2012. Ms. Barvinek participated personally. The employer participated by Mr. Joe Ahmann, Association President.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Margaret Barvinek began employment with the Greater Cedar Rapids & Marion Home Builders Association in October 1991. Claimant continued employment until April 25, 2012 when she resigned her position. Ms. Barvinek last held the position of Executive Officer and was paid by salary. The claimant was answerable directly to the association's Board of Directors.

In October 2011, the association's Board of Directors requested Ms. Barvinek to go to part time for financial reasons related to the downturn in home building. The parties negotiated a variety of alternatives which included having another office worker's position eliminated or reduced to part time. Ms. Barvinek was reluctant to have the other office worker's hours reduced. Ms. Barvinek had also offered the option of the Board allowing her to work full time for one-half year and part-time for the remainder of the year. At the end of the 2011 year the Board of Directors made a management decision to assign Ms. Barvinek to half-time hours instead of full-time hours. The Board agreed, however, to pay the employer's full share of health care and retirement as if the claimant remained full-time. By agreement of the parties, the effective date of the change to part-time employment was delayed until February 1, 2012. Ms. Barvinek

accepted the change to part-time hours and remained employed by the Home Builders Association until April 25, 2012 when she submitted her resignation that day by e-mail.

On April 24, 2012, the Board of Directors held a meeting in which they discussed the criteria for beginning the search for a replacement for Ms. Barvinek. Ms. Barvinek had previously indicated that she would retire at the end of the 2012 year and the Board believed it was appropriate to start making plans for the claimant's replacement. Although it was the Board's intent to allow Ms. Barvinek to continue working until the time she had set for her retirement, the claimant resigned the following day via e:mail without advanced notice.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes good cause reasons for leaving attributable to the employer on April 25, 2012. 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.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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). An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if the conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

Inasmuch as the evidence in the record establishes that Ms. Barvinek had accepted the change to part-time employment for a period of over two and one-half months before leaving and the claimant did not give the employer an opportunity to resolve her complaints at the time of leaving, the separation was without good cause attributable to the employer. Benefits are denied.

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.

**DECISION:**

The representative's decision dated June 14, 2012, reference 01, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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