

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ALISON R RUIRU
APT 6
8604 CAROLE CIR
URBANDALE IA 50342-4349

WESLEY RETIREMENT SERVICES INC
STE 120
5508 NW 88TH ST
JOHNSTON IA 50131

AMENDED

Appeal Number: 06A-UI-05131-HT
OC: 04/16/06 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Wesley Retirement Services, Inc. (Wesley), filed an appeal from a decision dated May 8, 2006, reference 01. The decision allowed benefits to the claimant, Alison Ruiru. After due notice was issued a hearing was held by telephone conference call on May 31, 2006. The claimant participated on her own behalf. The employer participated by Clinical Director Chris Butter, Scheduler Jo Kellis, Home Health Care Aide Nancy Hill, and Executive Director Bryan Sanders.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Alison Ruiru was employed by Wesley from November 22, 2005 until April 21, 2006. She was a part-time home care aide. At the time she was hired she was considered "regular part time" and could be scheduled between 16 and 30 hours per week, and had to be available for weekend and holiday shifts.

The claimant was hired by Executive Director Bryan Sanders who indicated she could submit a monthly calendar and the company would try to accommodate her schedule. Nothing could be guaranteed as the clients needed to be serviced. Wesley was able to accommodate her schedule most of the time through February 2006.

When Ms. Ruiru submitted her schedule of March 2006 she was unavailable the week of March 20 through 24, 2006, because she was taking finals. On March 1, 2006, she met with Clinical Director Chris Butters because he wanted to counsel her on her absenteeism and also discuss her schedule. An agreement was reached that she would go "limited part time" which would give her 16 hours per week or less, and she did not have to work weekends or holidays. She signed the change of status form effective that date.

The claimant was injured on the job on March 3, 2006, and she was on workers' compensation benefits for three weeks. She was released from physical therapy April 6, 2006, but remained on light duty. The physician restricted her to no lifting or bending. The employer did not have any work with clients to which it could assign Ms. Ruiru because, although some were ambulatory and reasonably self-sufficient, they were already assigned to other aids. In addition, the employer could not guarantee that circumstances might not arise with these elderly clients, which would put the claimant in a position of having to violate her work restrictions.

Wesley offered the claimant clerical work in the office, up to 30 hours per week between 8:00 a.m. and 4:00 p.m. She worked in this capacity on April 10 and 11, 2006, and then confronted Mr. Butters about her schedule for the remainder of April and through June. Due to being in school she was available Monday, Wednesday and Friday from 7:00 a.m. until 3:00 p.m. and on Tuesday and Thursday from 3:00 p.m. until 11:00 p.m. Mr. Butter indicated he had the work available in the office any time from 8:00 a.m. until 4:00 p.m. Monday through Friday until she was released to return to work without restrictions. Ms. Ruiru found this unacceptable and resigned effective April 21, 2006, after ascertaining it would not negatively impact her workers' compensation benefits.

Alison Ruiru has received unemployment benefits since filing a claim with an effective date of April 16, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 24.25(27) 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 section 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 section 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:

- (27) The claimant left rather than perform the assigned work as instructed.

The claimant quit because the employer was unable to accommodate her schedule to her satisfaction. Ms. Ruiru was under work restrictions which the employer was legally required to accommodate and it did so to the best of its ability. The only work available which it could be sure would not give rise to a critical situation that might cause the claimant to violate those restrictions was the clerical work. By her own admission she was available to work 20 hours during the office hours but she refused.

Ms. Ruiru was apparently under the impression the employer had obligated itself to schedule her only during the days and times she designated. This is not correct. The employer was willing to make a good-faith effort to accommodate her calendar and was able to do so for the most part. But the employer's first obligation is to its clients and it must have personnel available to meet their needs. The preferred working hours of the employees has a secondary importance.

The claimant had agreed to be "limited part time" and this entailed 16 hours or less per week. With her schedule the claimant would have been able to work 20 hours in the office, which is more than her part-time status required. The record plainly shows work was available to her within her work restrictions and around her class schedule. Her decision to quit because she could not be guaranteed to be able to set her own schedule and hours does not constitute good cause attributable to the employer. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 8, 2006, reference 01, is reversed. Alison Ruiru is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$2,202.00.

bgh/kkf