

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHEL M ROGERS
Claimant

APPEAL NO. 10A-UI-17109-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 11/07/10
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

Care Initiatives filed a timely appeal from a representative's decision dated December 8, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on January 26, 2011. The claimant participated personally. The employer participated by Susan Schneider, Attorney at Law and witnesses, Jack Studer, Administrator and Angie Campbell, Director of Nursing. Employer's Exhibits One and Two were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Rachel Rogers was employed by Care Initiatives working at the Westwood Nursing Facility from July 28, 2010 until November 6, 2010 when she voluntarily left employment without advance notice. Ms. Rogers worked as a full-time nursing assistant and was paid by the hour. Her immediate supervisor was Angie Campbell, Director of Nursing.

Ms. Rogers tendered her verbal resignation on November 6, 2010 after she had been sent home while the employer investigated an allegation that Ms. Rogers had made an inappropriate statement regarding a facility resident. Although the statement made by Ms. Rogers was rhetorical in nature, the employer felt it was inappropriate and because it had been reported by two separate employees the employer believed that the matter should be investigated and the claimant was sent home pending an investigation. Although the claimant was informed later that day that she could return to work she declined to do so and tendered her resignation. When Ms. Rogers met with her immediate supervisor, Ms. Campbell, the following Monday to turn in her keys and identification, Ms. Rogers stated only that she was, "moving on to do something different."

In September 2010, Ms. Rogers had made a complaint to Ms. Campbell that another CNA had made a threatening statement to the claimant. Ms. Campbell investigated the allegation and met with both CNAs independently to warn each that they must work in a cooperative manner or

in the alternative avoid contact with each other. Ms. Campbell nor the home's administrator, Mr. Studer, received any additional complaints from Ms. Rogers regarding any additional difficulties with the other CNA.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. 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.

An individual who voluntarily leaves her employment must first give notice to the employer of 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 conditions persist in order preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). Claimants are not required to give notice of intention to quit due to intolerable, detrimental or working conditions if the employer had or should have had reasonable knowledge of the condition. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

In this case the evidence establishes that Ms. Rogers chose to leave her employment after allegations were made by two employees that Ms. Rogers had made an inappropriate statement about a facility resident. The administrative law judge finds the employer to be reasonable in its decision to send Ms. Rogers home temporarily pending an investigation as the complaints seemed to be credible because they came from two independent sources. The evidence in the record does not establish that Ms. Rogers continued to complain about any ongoing problems with another CNA after initially making a complaint to management in September of 2010. Management addressed the complaints at that time and reasonably believed that the matter had been resolved.

The administrative law judge concludes based upon the evidence in the record that Ms. Rogers left employment in anticipation that she might be discharged or issued a disciplinary action because of the statement that she was alleged to have made about a resident on November 6, 2010. While this may be a good cause personal reason for leaving, it was not a good cause reason attributable to the employer. Benefits are withheld.

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 December 8, 2010, reference 01, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, and meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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