

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHENIE STROUP
Claimant

APPEAL NO. 06A-UI-11733-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEY RETIREMENT SERVICES INC
Employer

**OC: 10-22-06 R: 02
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 27, 2006, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 21, 2006. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Chris Butters, Clinical Director, and Betty Stone, Director of Human Resources, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time, insurance eligible, home health aide for Wesley Retirement Services from March 29, 2006 to October 22, 2006. On July 5, 2006, the claimant experienced back pain while working and on July 6, 2006, she went to the emergency room due to her back pain but continued working and did not file an accident report with the employer. On July 7, 2006, the employer instructed the claimant to see their physician, and light duty was recommended and accommodated by the employer. She continued physical therapy and light duty until obtaining a full release July 20, 2006, and then worked her regular schedule from July 21 through September 12, 2006. On September 13, 2006, the claimant provided a doctor's note excusing her from work September 11, 2006 to September 15, 2006, "due to medical reasons." On September 20, 2006, the claimant provided a note from her physician stating that "Due to back pain, Stephanie to work with 8 hour patients, not 1 hour patients." Clinical Director Chris Butters faxed a letter to the claimant's physician asking for clarification of her restrictions because the same tasks were performed for both the eight-hour patients and the one-hour patients. Mr. Butters told the claimant he faxed the letter and she would need to follow up with the employer's physician. On September 28, 2006, Human Resources Director Betty Stone was notified by the employer's workers' compensation carrier that it had not received a first report of injury. Ms. Stone left a phone message for the claimant asking for the accident report so she could complete the first report of injury documentation. The claimant left a message for Ms. Stone that Mr. Butters had all of the information; but when Ms. Stone spoke to

Mr. Butters about the situation, he stated he had no additional information about her injury and Ms. Stone prepared an incomplete first report of injury. On October 5, 2006, the claimant informed the employer's physician that she was no longer working for the employer. On October 9, 2006, Mr. Butters called the claimant's physician to again request a clarification of her restrictions and the doctor's office told him "it was not necessary to respond because she was no longer working" for the employer. On October 18, 2006, Ms. Stone wrote to the claimant and asked her to report on her work status and about payment of her insurance premiums, but the claimant did not respond. On October 22, 2006, the employer learned the claimant filed for unemployment insurance benefits. On October 31, 2006, Ms. Stone sent the claimant a letter indicating it appeared the claimant had resigned her position and included COBRA paperwork. On November 3, 2006, the claimant left Ms. Stone a message stating it was not her intention to resign and she would contact her doctor's office for release of her medical records. Consequently, the employer reinstated her employment and on November 6, 2006, requested a meeting to resolve issues such as the claimant's work restrictions. The claimant stated she could meet November 10, 2006, but on November 9, 2006, she called and said she could not attend the November 10, 2006, meeting but was available November 13, 2006. On November 13, 2006, she called and stated she could not attend the meeting that day and on November 15, 2006, Ms. Stone called and left a message asking the claimant when she was available to meet. Later that day the claimant left a message for Ms. Stone stating her husband and her doctor agreed she could work the 11:00 p.m. to 7:00 a.m. shift and she did not know if it was necessary to meet. Ms. Stone called the claimant and left a message stating the employer still wanted to meet with her to discuss her work restrictions. On November 22, 2006, the unemployment fact-finding interview was held. The employer still considers the claimant to be an employee.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

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 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). 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. The claimant apparently sustained a work-related back injury July 5, 2006. The employer accommodated her restrictions until she obtained a full release July 20, 2006. She worked without incident until September 13, 2006, at which time the employer received a doctor's note excusing her from work from September 11, 2006 to September 15, 2006. On September 20, 2006, the claimant presented the employer with a note stating she could work with the eight-hour patients but not the one-hour patients. The employer asked for further clarification because home health aides perform the same tasks for both the eight-hour and one-hour patients, but neither the claimant nor her physician responded to the employer's request for additional information until October 9, 2006, when her physician stated it was not necessary to respond because the claimant told her

doctor she was no longer working for the employer. When the claimant did not respond to the employer's request to clarify her work status, injury, and insurance premiums, and filed for unemployment insurance benefits the employer understandably believed she had resigned her position. Although the claimant did respond to that letter and was reinstated as an employee, she did not provide the necessary paperwork, return to work, or attend any of the scheduled meetings with the employer. While the claimant told the employer she did not intend to resign, her actions, or lack thereof, constitute a voluntary leaving of employment. Consequently, the administrative law judge concludes the claimant voluntarily left her employment and has not demonstrated that her leaving was for good cause attributable to the employer. Benefits are denied.

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.

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 November 27, 2006, reference 03, 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. The claimant is overpaid benefits in the amount of \$2,401.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw