

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUANN R HERTINIG
Claimant

APPEAL NO. 09A-UI-14476-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 08/23/09
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated September 18, 2009, reference 01. The decision allowed benefits to the claimant, Luann Herting. After due notice was issued, a hearing was held by telephone conference call on October 28, 2009. The claimant participated on her own behalf and with witnesses Erica Chairez and Jeannette Hofert. The employer participated by DON Jennifer West, Charge Nurse Ashley Wilson and was represented by TALX in the person of Lynn Corbeil.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Luanne Herting was employed by Care Initiatives from December 30, 2008 until August 22, 2009 as a full-time nursing assistant working on the weekends. She was not getting along well with other employees and felt she was being harassed because other staff would not give her help with residents and would not talk to her.

She complained to DON Jennifer West on August 15, 2009, about a particular employee, Chelsea. Ms. West told her to confront the other employee about her concerns, which she did on August 16, 2009. This was without effect and the claimant felt it only made matters worse. She did not return to Ms. West to address the problem further. She did not go to the administrator of the facility or to the corporate human resources department to file a formal complaint. Ms. West had talked to the other employee and investigated the matter but did not have the opportunity to share her findings with the claimant before the next weekend schedule.

On August 22, 2009, Ms. West and Charge Nurse Ashley Wilson called the claimant into the office to issue a written warning. This was her second written warning. Ms. West was reading the document to the claimant and Ms. Herting felt all of the issues discussed were “lies” and Ms. Wilson was harassing her with these allegations. At that time she stood up, surrendered her keys and her badge, said it was “bullshit” and left the facility.

Luann Herting has received unemployment benefits since filing a claim with an effective date of August 23, 2009.

REASONING AND CONCLUSIONS OF LAW:

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(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

871 IAC 24.25(28) 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:

(28) The claimant left after being reprimanded.

The claimant felt she was being harassed by other employees. She properly discussed these concerns with Ms. West and when the employer's recommendations did not work out, she did not make any further effort to bring her concerns to the DON, the administrator or the corporate human resources department. She had no idea whether or not the employer investigated the matter further or talked to the other employees. In order for good cause attributable to the employer to exist, a claimant with grievances must make some effort to give the employer an opportunity to work out whatever problem led to the grievance. By not giving notice to the employer of the circumstances causing the decision to quit employment, the claimant failed to give the employer an opportunity to make adjustments which would alleviate the need to quit. *Denby v. Board of Review*, 567 P.2d 626 (Utah 1977).

The claimant did not get along with other employees but there does not appear to have been any harassment, just disagreements and personality conflicts. The precipitating event was the meeting on August 22, 2009, at which she was going to be issued a second written warning. The meeting lasted less than five minutes before the claimant became angry and quit. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of September 18, 2009, reference 01, is reversed. Luanne Herting is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css