

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANA ZUMWALT
Claimant

APPEAL NO: 10A-EUCU-00642-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SELECT MEDICAL CORPORATION
Employer

OC: 01/17/10
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Select Medical Corporation (employer) appealed an unemployment insurance decision dated July 13, 2010, reference 02, which held that Diana Zumwalt (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 9, 2010. The claimant participated in the hearing. The employer participated through Sarah Busha, Human Resources Coordinator; Donna Lyons, House RN Supervisor; Kate Diaz, DCS; and Austin Cleveland, CEO. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time certified nurse's assistant from April 26, 2010 through May 29, 2010 when she walked off the job. She contends she quit due to unsafe work conditions. The claimant testified the employer does not allow its employees to use Hoyer lifts but the employer testified it has two Hoyer lifts and it is up to the particular employee as to whether or not they want to use it.

The claimant testified there are only two certified nursing assistants to 26 patients each. However, she subsequently admitted that there were three certified nursing assistants working on the last day of her employment with only 22 patients overall. Additionally there were four nurses and a house supervisor also working that day.

The claimant said she was supposed to be in orientation for three weeks but only had two days. She claimed there were no supplies; there were no towels or soap. The employer said they

might run low on towels but they never run out. The claimant testified she got hurt on the job but did not seek medical attention. However, she was upset because no one contacted her about it until two weeks after she quit.

An exit interview was completed and the claimant signed it on June 10, 2010. The first page asked for the main reason the claimant was leaving and the answer was, "disrespect from nurses and lack of team players." On the last page, the claimant was asked if she would recommend this company to others as a place to work and the answer "yes" is circled. The claimant testified that the employer "twisted" her words on the second page of the exit interview.

First claimed 20 to 25 – then later admitted only 16 patients
Said only 2 days of orientation and then said more
Said didn't learn injury reports in orientation then said she did

The claimant filed a claim for unemployment insurance benefits effective January 17, 2010 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

Iowa Code § 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(21) 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 § 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 § 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:

(21) The claimant left because of dissatisfaction with the work environment.

The claimant contends she quit her employment on May 29, 2010 due to an unsafe work environment. The evidence does not support her contention and likewise, the exit interview does not support that claim. The claimant's testimony was somewhat contradictory and that combined with the employer's evidence, confirms the claimant's voluntary separation was for personal reasons.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated July 13, 2010, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs