IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

KIRSTIEN L SLATER
Claimant

CARE INITIATIVES
Employer

APPEAL NO. 18A-UI-11772-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/18/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's December 3, 2018, decision (reference 01) that concluded Kirstien Slater (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 19, 2018. The claimant participated personally. The employer was represented by Jennifer Groenwold, Hearings Representative, and participated by Cheryl Dreyer, Director of Nursing; Kayla Harken, Assistant Administrator; and Amanda Rivera, Unemployment Insurance Consultant. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on June 19, 2018, as a part-time registered nurse. She worked on Mondays and Tuesdays. The claimant signed for receipt of the employer's handbook on June 19, 2018.

On October 16, 2018, between 9:00 and 10:00 p.m., the claimant noticed another nurse sitting at a desk. The claimant leaned near her to hear what the nurse said. The nurse burped and smelled of alcohol. A certified nursing assistant said she saw the nurse stumble in the halls a couple of times. The claimant removed the nurse's keys to the medication cart and found unattended medication on top of the cart. She immediately checked on the residents in the nurse's wing. The claimant examined each patient's medication log to see if they received the correct medicine and if they were safe. She gave the nurse's keys to the third shift nurse when she came on duty. The claimant's shift was supposed to end at 10:00 p.m. The claimant's duties and the other nurse's duties took her well past the end of her shift. As soon as her patients and the other nurse's patients were taken care of, she clocked out, called her supervisor and reported the nurse's behavior. The claimant called her supervisor, the assistant director of nursing (ADON) at 11:04 p.m. on October 16, 2018.

On October 17, 2018, the director of nursing (DON) called the claimant and had a conversation. The DON told the claimant she should have reported the situation immediately. The claimant said she did report it immediately. The DON did not ask the claimant for a written statement.

At some point, the DON and the ADON discussed what the claimant said on October 16, 2018, and what she said on October 17, 2018. The DON thought the claimant's story was suspicious because the ADON thought the claimant was driving when she called. The claimant said the nurse and she were both off work at the time of the call. The claimant did not tell the ADON the medication was left out. The claimant told the DON she was in the break room. Therefore, the DON thought they were working. The claimant told the DON that medication was left out.

The claimant worked on October 22 and 23, 2018. She heard the nurse was still working. The nurse had an incident where she fell at work and was transported to the hospital. The claimant worked again on October 29 and 30, 2018.

On November 1, 2018, the DON, the ADON, and the supervisor called the claimant on the telephone. The claimant was driving and she was not scheduled to work. They questioned her about the October 16, 2018, incident. She was confused about the date of the incident because she could not see a calendar, until they corrected her. The claimant heard the ADON assert that the claimant did not report the incident. The claimant corrected the ADON.

On November 2, 2018, the DON and the administrator called the claimant for a fifty-two minute session. The claimant was not scheduled to work. The employer did not take the claimant's written statement. The administrator asked the claimant why she didn't question the nurse about what she was drinking, why she was drinking, and when she started drinking. The administrator wanted to know why the claimant left the nurse unattended and why she did not report the incident. Throughout the session the administrator told the claimant she would be held accountable for any outcomes. The claimant was upset and crying. She told the employer that she had done the right thing by reporting it immediately and they were targeting her.

On November 5 and 6, 2018, the claimant called in sick. On November 9, 2018, the claimant issued a letter a resignation.

The claimant filed for unemployment insurance benefits with an effective date of November 18, 2018. The employer participated personally at the fact finding interview on November 29, 2018, by Amanda Rivera, a representative from Equifax.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

Iowa Admin. Code r. 871-24.26(4) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The employer believes it would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that she intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. *Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant*, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of their intolerable and detrimental behavior on October 17, November 1, and 2, 2018. The employer told the claimant she had not reported the incident or did not report it immediately. The claimant gave verbal statements and the employer twisted her words. It did not take the rational step of taking her written statement. It is reasonable for employees and employers to treat each other justly and with integrity. The claimant was repeatedly called a liar. She subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits, provided she meets all the qualifications.

DECISION:

The representative's December 3, 2018, decision (reference 01) is affirmed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs