

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**TAMMY L LOUGH  
5612 N DIVISION  
DAVENPORT IA 52806**

**CARMELITE SISTERS FOR THE AGED &  
INFIRM KAHL HOME FOR THE AGED  
1101 W 9<sup>TH</sup> ST  
DAVENPORT IA 52804**

**JOHN GRAUPMANN  
IOWA LEGAL AID  
401 HARBORVIEW BLDG  
736 FEDERAL ST  
DAVENPORT IA 52803**

**Appeal Number: 04A-UI-02349-H2  
OC 02-01-04 R 04  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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 February 27, 2004, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held in Davenport, Iowa on June 11, 2004. The claimant did participate and was represented by John Graupmann, Paralegal. The employer did participate through Jim Fascher, Director of Personnel. Employer's Exhibit One was received. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a certified nurses assistant/care assistant full time beginning in

June 4, 2003 through February 4, 2004 when she voluntarily quit. The claimant was being paid \$10.40 per hour to work as a certified nurses assistant. In August 2003, the claimant sustained a non-work related injury to her back which resulted in her having permanent work restrictions imposed upon her of no lifting over 50 pounds and limited bending and stooping. When the claimant told the employer about her work restrictions she was accommodated and allowed to continue working performing both certified nursing assistant duties and also performing care assistant duties. After allowing the claimant to work at accommodated duties for several months, the claimant was told in January 2004 that her wage would be reduced to \$7.25 per hour because she was not completely able to perform all certified nursing assistant duties and that in the future she would only be required to perform the job functions of a care assistant. The claimant was then told that since she was not able to perform all of her duties as a certified nursing assistant, her job title and pay would be changed to that of a care assistant, which pays only \$7.25 per hour. The claimant admits that she was not able to perform all of the duties of a certified nursing assistant because of her permanent work restrictions that resulted from her non-work related injury. When the claimant was notified that her pay would be cut and her job duties changed, she voluntarily quit her job rather than perform the new job of care assistant offered to her by the employer.

The claimant has received unemployment insurance benefits after the separation beginning the week ending February 7, 2004.

#### 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.

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 (amended 1998).

The employer did not change the claimant's contract of hire until the claimant herself became unable to perform all the functions of her job as a certified nursing assistant. The claimant admits that she can no longer perform all the job functions of a certified nurses aid, yet she still expects the employer to pay her at the rate of pay of a certified nurses aid. The employer offered to move the claimant to a job that did comply with her work restrictions, that of a care assistant, which did not require the claimant perform certified nursing duties but did pay less than a certified nursing assistant. When the claimant's job duties were to be reassigned and her pay reduced the claimant was not going to be required to perform any certified nursing duties. Continued work was available for the claimant. It was not the employer's fault that the claimant could no longer perform the job functions of a certified nurses assistant. The employer was trying to keep the claimant employed at a job she could perform, even though her pay would be reduced because she would be performing a less skilled job. The claimant chose to quit, even though she was not able to perform all the functions of the certified nursing assistant job. Her leaving was without 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 February 27, 2004, reference 02, 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 \$2,134.47.

tkh/kjf