

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ENDIA M SENECAUT
Claimant

APPEAL NO: 18A-UI-11025-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEALTHCARE SERVICES GROUP INC
Employer

OC: 10/14/18

Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Benefit Overpayment

STATEMENT OF THE CASE:

Healthcare Services Group, Inc., the employer filed a timely appeal from a representative's unemployment insurance decision dated October 29, 2018, (reference 01) that held claimant eligible to receive unemployment insurance benefits, finding that the claimant quit work on October 12, 2018 because working conditions were detrimental. After due notice was provided, a telephone hearing was held on November 28, 2018. Although notified, claimant did not participate. Employer participated by witness Mr. Larry Junk, and Ms. Karen Cimino, Hearing Specialist, Corporate Cost Control Company.

ISSUES:

Whether the claimant left employment with good cause attributable to the employer.
Whether the claimant has received unemployment insurance benefits that she is not entitled to. If overpaid, whether the claimant must repay the overpayment or whether the employer's account should be charged, based upon the employer's participation in the fact-finding interview.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Endia Senecaut was employed by Healthcare Services Groups, Inc. from February 1, 2017 until October 9, 2018 when she voluntarily quit employment. Ms. Senecaut was employed as a full-time account manager and was paid by salary. Her last immediate supervisor was Mr. Tim McLaughlin, District Manager.

Ms. Senecaut called Tim McLaughlin and resigned by telephone on the morning of October 12, 2018. At the time, Ms. Senecaut cited the distance to work, the cost of gas, and lack of childcare as reasons for leaving.

Ms. Senecaut had contacted her supervisor earlier that morning to request permission to miss work that day because she had been up late at an emergency room the previous evening with her son, who had been injured. Claimant stated that she had not slept and wanted Mr.

McLaughlin to cover her shift, or excuse her from working that day. Mr. McLaughlin responded that he would not authorize her to be absent and that she should report to her job. If she did not report, her absence would be considered unauthorized, and an attendance violation. Ms. Senecaut responded by quitting her employment, citing the distance to work, transportation costs, and her desire to remain home with her son.

At the time she quit employment on October 12, 2018, the claimant had not received any disciplinary actions and her job was not in jeopardy. The employer was considering issuing Ms. Senecaut a warning for previous tardiness. The proposed warning would not have put her job in jeopardy.

Ms. Senecaut was aware of the location of the employer's facility and the requirement that she provide her own transportation when she accepted employment. Ms. Senecaut did not complain or use a "hotline" for employees to complain about work, or go up the chain of command if the employee is dissatisfied with the decision made by a supervisor. Information about using the company's "hotline" is posted. She did not use the "hotline." Ms. Senecaut was also aware that she could bring her concerns to Larry Junk if she felt that her immediate supervisor was not responsive, but she did not do so.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause that was attributable to the employer. It does not.

Iowa Code § 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. 871-24.25(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 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:

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

Iowa Admin. Code r. 871-24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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.

A claimant is not qualified to receive unemployment insurance benefits if the claimant voluntarily quit employment without good cause attributable to the employer. Iowa Code Section 96.5(1).

It is the claimant's burden to prove that the voluntary quit was for good cause that would not disqualify her. Iowa Code Section 96.6-2.

In the case at hand, the evidence in the record establishes that Ms. Senecaut left her employment on October 12, 2018 because she was dissatisfied with the distance to work, the cost of commuting, childcare issues and because her immediate supervisor was not willing to authorize her to miss work that day. Without authorization, the absence would be considered an attendance infraction. Claimant's immediate supervisor was unable to "fill-in" for Ms. Senecaut that day, and expected her to work as scheduled. If the claimant did not report for work, the absence would have counted against the claimant's attendance record. The absence would not have resulted in her discharge from employment. Ms. Senecaut had not been previously warned before as company policy requires. The claimant chose to leave employment although reasonable alternatives were available to her.

The claimant had not complained about any working conditions, and Ms. Senecaut had the option of going up the chain of command to Mr. Junk or use the company's "hotline" to have her concerns reviewed by management above her supervisor. Although information on the ways to resolve employment issues was posted, Ms. Senecaut did not use these reasonable alternatives but instead quit employment.

When a person voluntarily quits employment due to general dissatisfaction with the hours, the work environment or the inability to work with other employees or their supervisor, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21)(22).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

The administrative law judge concludes that Ms. Senecaut left employment without good cause attributable to the employer. The claimant left work without good cause attributable to the

employer. Benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment insurance benefits in the amount of \$969.00 is filing a claim with an effective date of October 14, 2018 for the week ending dates October 20, 2018 through November 10, 2018. The testimony of the witness, an employee of Corporate Cost Control establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttal.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did participate in the fact-finding interview, the claimant is obligated to repay the agency the benefits she received and the employer's account shall not be charged.

DECISION:

The representative's unemployment insurance decision dated October 29, 2018, reference 01, is reversed. Claimant left work without good cause attributable to the employer Unemployment insurance benefits are withheld until the claimant works in and has been paid for wages for insured work equal to ten times her weekly benefit amount, and meets all other eligibility requirements of Iowa law. The claimant has been overpaid unemployment insurance benefits in the amount of \$969.00 and is liable to repay this amount. The employer's account shall not be charged based upon the employer's participation in the fact-finding interview.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn