

**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**

**TWYLA J RICHARDSON  
303 N THIRD ST APT 10  
LAURENS IA 50554**

**ST LUKE LUTHERAN HOME INC  
1301 ST LUKE DR  
SPENCER IA 51301**

**Appeal Number: 05A-UI-03487-DT  
OC: 02/27/05 R: 01  
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, 4<sup>th</sup> 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 Overpayment of Benefits

**STATEMENT OF THE CASE:**

St. Luke Lutheran Home, Inc. (employer) appealed a representative's March 25, 2005 decision (reference 01) that concluded Twyla J. Richardson (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2005. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Nancy Mills appeared on the employer's behalf and presented testimony from one other witness, Cindy Hahn. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on November 28, 2001. She worked full time as a certified nursing aide (CNA) in the employer's long-term care nursing facility. Her last day of work was February 6, 2005. The claimant was scheduled to work on February 7 and February 8, 2005, but called in absences both days for health reasons. She was scheduled to work on February 11, 2005 but called in an absence because her daughter did not have another babysitter for her child.

The claimant was next scheduled to work on February 14, 2005, but she called and left a message that her daughter was having a baby and that she would be off at least for a couple days, but that she would contact the employer later in the week. The employer expected to hear from her by her shift scheduled for February 20, 2005. However, the claimant did not call or report that day or the next two days, both of which she was scheduled to work. As of February 22, 2005, the employer considered her to have voluntarily quit under its three-day no-call/no-show policy. There was no contact between the claimant and the employer after February 14 until March 3, 2005, when the employer received a copy of some medical documentation sent by mail from the claimant; however, the claimant did not contact the employer regarding the possibility of returning to work.

The claimant established a claim for unemployment insurance benefits effective February 27, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$709.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). A three-day no-call/no-show in violation of company rule is also considered to be a voluntary quit. 871 IAC 24.25(4). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. The claimant has not satisfied her burden. 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 representative's March 25, 2005 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of February 27, 2005, benefits are withheld until such time as the claimant 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 \$709.00.

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