

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY K BECKLER
Claimant

THE EASTER SEAL SOCIETY OF IA INC
Employer

APPEAL 18A-UI-00639-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/17/17
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the January 10, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 7, 2018. Claimant participated. Employer participated through director of case management Katie Peck. Recruitment and talent coordinator Anna Engler and chief talent officer Kristi Sterling attended the hearing on behalf of the employer.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a case manager from March 11, 2002, and was separated from employment on December 11, 2017.

In 2002, claimant was hired by the employer as a direct care employee. Claimant transferred to a case management position approximately two years after she was hired. Claimant did not think the direct care position was a good fit for her. A direct care employee works with clients on achieving goals and they implement the goals the case managers write. A case manager

writes the goals for clients and they monitor the clients' progress. Claimant has been in case management since her transfer.

On October 31, 2017, the employer was notified that one of the companies that funded its case management service was no longer going to provide funding after November 30, 2017. After October 31, 2017, the employer met with its case managers multiple times to discuss the steps the employer was taking. The employer informed its case managers that it was creating new positions that the case managers could apply for. The employer also discussed the dynamics of the employer's finances. The employer received a new temporary contract that provided some funding for its case management service until December 31, 2017. The employer asked its case managers to provide weekly projections of their time needed for case management duties. The employer also offered claimant training and hours performing direct care duties.

On December 5, 2017, claimant responded to Ms. Peck regarding her projections. Claimant also declined to work for another program (direct care). Ms. Peck told claimant that given the dynamics of the employer, declining was not an option and she was going to need to perform direct care duties. On December 6, 2017, the employer sent an e-mail to claimant and the other case managers informing them that they needed to perform 14 hours of direct care duties because of the employer's finances. Claimant understood that she would only be performing 26 hours of her case management duties and then she would have to perform 14 hours of direct care duties each week. Claimant's wage was not changing.

The employer informed claimant that after December 31, 2017, all its case management positions would be eliminated. Employees had the option to apply for different positions with employer at the same pay rate. The employer created the positions to retain its employees. The employer told claimant that if she wanted to stay with the employer, she was going to have to apply for a position in direct care. If claimant became a direct care employee, her wage would not change.

On December 11, 2017, Ms. Peck and Ms. Engler met with claimant. Ms. Peck informed claimant the employer did not have enough hours for her to perform full-time case management duties. The employer informed claimant she had to perform direct care duties. Claimant refused to perform the direct care duties. Ms. Peck told claimant the employer would not discharge her, but it would accept her resignation. The employer accepted claimant's resignation. Claimant then left the meeting, retrieved her personal belongings, left her keys, and then left the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed.

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(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

As of December 11, 2017, the employer reduced claimant's hours performing her case management duties, which she has been performing for approximately thirteen years, from 40 hours to approximately 26 hours. The employer also started requiring claimant to perform 14 hours in a direct care position. The direct care job duties are substantially different from claimant's case management job duties. It is noted that claimant had previously transferred from a direct care position to her most recent case management position approximately thirteen years ago because she did not think the direct care position was a good fit for her. The employer also informed claimant that her case manager position was being eliminated on December 31, 2017 and she would have to apply for a different position if she wanted to continue to work for the employer. Claimant refused to perform the required direct care duties and did not apply for a different position.

An approximate 35% reduction in claimant's hours performing her case management job duties is a substantial change. The employer also required claimant to perform different job duties and was eliminating her case manager position on December 31, 2017. In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). Inasmuch as claimant would suffer a substantial reduction in hours performing the job duties she had been performing for the last thirteen years and the employer was requiring her to start performing job duties in a different position, the change of her most recent employment contract is considered substantial. It is also noted that the employer was eliminating her case manager position on December 31, 2017. Furthermore, the employer has not established misconduct as a reason for the change. Thus, the separation was with good cause attributable to the employer. Benefits are allowed.

As benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer's account are moot.

DECISION:

The January 10, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at:

<https://www.myiowauui.org/UIIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

http://www.youtube.com/watch?v=_mpCM8FGQoY