

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELDA GARCIA
Claimant

APPEAL NO. 09A-UI-19320-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEY RETIREMENT SERVICES INC
Employer

**Original Claim: 11/15/09
Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit
Section 96.3(7) –Recovery of Overpayments

STATEMENT OF THE CASE:

Wesley Retirement Services, Inc. (Wesley) filed an appeal from a representative's decision dated December 16, 2009, reference 01, which allowed benefits to Elda Garcia but denied the employer relief from charges. After due notice was issued, a hearing was held by telephone on February 5, 2010. Ms. Garcia participated personally. The employer participated by Debbie Hornbuckle, Human Resources Director, and Bart Hoskins, Director of Facilities Management.

ISSUE:

At issue in this matter is whether Ms. Garcia was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Garcia began working for Wesley in October of 2007 as a full-time housekeeper. On July 13, 2009, she advised her supervisor that she was quitting effective August 7. She indicated she was going to Texas to care for an ill family member. Ms. Garcia planned to move to Texas to care for her daughter-in-law and not return to her job at Wesley. Her supervisor told her that, if she decided to return, she could come back as an "on-call" worker.

Ms. Garcia returned to work at Wesley on November 10 on an "on-call" basis. She has worked a total of 182 hours between November 10 and February 5.

Ms. Garcia filed a claim for job insurance benefits effective November 15, 2009. She has received a total of \$2,268.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

Ms. Garcia is currently partially unemployed. However, she is underemployed because she quit her full-time job effective August 7, 2009. Had she not quit, she could have continued in her

regular employment. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Garcia quit her job to go to Texas to care for an ill family member. She was not on a leave of absence, as it was her intention to relocate and remain in Texas. An individual who leaves employment due to serious family needs or responsibilities is presumed to have left employment for no good cause attributable to the employer. 871 IAC 24.25(23).

Because Ms. Garcia's separation was not for cause attributable to the employer, she is not entitled to job insurance benefits. She knew when she quit that if she came back, it would be on as-needed basis. For the reasons stated herein, benefits are denied.

Ms. Garcia has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated December 16, 2009, reference 01, is hereby reversed. Ms. Garcia is partially unemployed for no good cause attributable to the employer. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Garcia will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw