

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

YVONNE C PARRISH
1425 S 5TH ST UNIT #4
CARLISLE IA 50047

ABBAY HEALTH CARE LLC
THE ABBEY
PO BOX 13169
DES MOINES IA 50310

Appeal Number: 04A-UI-02297-BT
OC: 01/18/04 R: 02
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Abbey Health Care (employer) appealed an unemployment insurance decision dated February 19, 2004, reference 03, which held that Yvonne Parrish (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 22, 2004. The claimant submitted a written statement in lieu of her participation. The employer participated through Dennis Olson, Chief Executive Officer, and Representative Laura Gawronski, of Personnel Planners, Inc. Claimant's Exhibit A and Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time social services director from approximately September 24, 2003 through January 24, 2004. The claimant called in sick on January 22, 2004 after advising the director of nursing that she had been drinking the night before. Later that day, the employer called the claimant at home to tell her some good news; he told her that the state lifted their admissions restriction. The claimant stated she had to come in for an appointment at 2:00 p.m. The employer stopped in the claimant's office that afternoon and talked with her. As he was leaving and at her door, he stated to the claimant that it was the general policy that the "brown bottle flu" was not an acceptable reason to miss work. The claimant became enraged at that comment and started yelling at the employer. The employer sent for the director of nursing and when she arrived, the claimant started yelling at the director for "breaking her confidence" by repeating that she had gone out drinking for a former employee. The claimant started asking if she was fired and she was told she was not fired. A decision was made for the claimant to go home and she left. That evening, she returned to the facility and retrieved all her personal belongings. The claimant did not arrive at work the next day and when the director of nursing contacted her, the claimant stated she had been fired. The director of nursing told the claimant she had not been fired. The claimant brought in her keys and cell phone on the following day and again, the director of nursing advised her she was not fired.

The claimant filed a claim for unemployment insurance benefits effective January 18, 2004 and has received benefits after the separation from employment in the amount of \$447.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated her intent to quit and acted to carry it out when she went to the facility on the night of January 22, 2004 to gather all her belongings. She further established she quit when she failed to report to work after that. And finally, the claimant admits the employer contacted her to find out where she was on January 24, 2004 when she did not arrive at work, which would not have been done if she had been fired.

The claimant bears the burden of proving that the voluntary quit was for a good reason that would not disqualify her. Iowa Code Section 96.6-2. She contends she was fired even though she admits she was never told she was fired. Where an individual mistakenly believes that she is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984). The claimant has failed to establish that she voluntarily quit her employment without good cause attributable to the employer. Benefits are denied accordingly.

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 unemployment insurance decision dated February 19, 2004, reference 03, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has 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 \$447.00.

sdb/b