

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH S ROBERTSON
Claimant

APPEAL NO. 08A-UI-08177-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOOD SHEPHERD
GERIATRIC CENTER INC**
Employer

**OC: 07/06/08 R: 02
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Good Shepherd Geriatric Center (employer) appealed a representative's September 2, 2008 decision (reference 01) that concluded Sarah Robertson (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 29, 2008. The claimant participated personally. The employer participated by Jean Palmer, Director of Assisted Living.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 3, 2007, as a part-time resident care aid. The claimant signed for receipt of the employer's handbook and Request for Days Off Policy on January 3, 2007. In addition, the claimant attended an in-service training on July 19, 2007, that discussed the employer's request policy. The policy states that an employee must request time off by the 5th of the month before the requested day off. If the request is made after the 5th of the month, the employee must find a replacement person for her shift. An employee may only request four days off per month. In November 2007, the claimant requested that she only work on weekends so she could attend school. The employer complied with that request.

On May 5, 2008, the claimant asked to take June 7, 8, 14, and 15, 2008, off. On May 17, 2008, the claimant put in a request to have June 21, 22, 28, 29, and July 5, 2008. The claimant attached a note stating she did not need June 14 and 15, 2008, but did need June 21 and 22, 2008. The employer did not see the note. The schedule was published and the claimant had June 7, 8, 14, and 15, 2008, off. The claimant complained to the head nurse. The head nurse

told her to try to find someone to trade weekends. The claimant could not. On June 18, 2008, the claimant asked the head nurse what the penalty would be for not working her shift. The head nurse stated the claimant would receive two warnings. The head nurse encouraged the claimant to keep looking.

On June 20, 2008, the claimant left town. The employer tried to telephone the claimant to see if she was planning on working June 21, and 22, 2008, but the claimant did not answer. The claimant did not contact the employer. The employer assumed the claimant was a voluntary termination. On July 3, 2008, the claimant picked up her paycheck and someone told her she had been terminated. Continued work was available had the claimant appeared for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without 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.

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's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant stopped appearing for work, answering the telephone, or contacting the employer. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue

of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment that must be repaid.

DECISION:

The representative's September 2, 2008 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,453.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw