

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EILEEN E GREGERSON
Claimant

APPEAL NO. 11A-UI-03390-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPPORTUNITY VILLAGE
Employer

**OC: 02/06/11
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 11, 2011, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 8, 2011. The claimant participated. The employer participated by Cindy Westendorf, human resources manager, and Monica Verhelst, team advisor. The record consists of the testimony of Eileen Gregerson; the testimony of Cindy Westendorf; the testimony of Monica Verhelst; and Employer's Exhibit 1.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides residential dayhab services for individuals with disabilities. The employer has approximately 650 employees. The claimant was hired on October 6, 2009, to work at one of the residential facilities located in Webster City, Iowa. The claimant was a nurse. Her last day of actual work was January 10, 2011. On January 16, 2011, the claimant texted her employer to say that she was quitting immediately. She provided a written resignation on January 17, 2011. (Exhibit 1) The employer accepted the claimant's resignation. Work was available for the claimant at the time of her resignation.

The claimant resigned due to her anger and frustration over her paycheck. She picked up her paycheck on January 14, 2011, and it was short eight hours. Bonnie, her supervisor, had made an error transferring the information from the claimant's time card to the payroll sheet that was sent to payroll. The claimant had had some prior problems with her paycheck when shift

differential had not been paid. The employer had a policy that any mistakes on payroll would be corrected on the next paycheck.

REASONING AND CONCLUSIONS OF LAW:

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 quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence is uncontroverted that it was the claimant who initiated the separation of employment. She was, to use her words, angry and frustrated because her check was short eight hours. She had picked up the check on January 14, 2011. When she received the check, she gave no indication that she was upset, although clearly she was. She sent a text message saying she was quitting and then confirmed this in a written statement delivered on January 17, 2011. Neither the text message nor the written resignation mentions the problem with the paycheck on January 14, 2011.

The issue is whether the claimant's decision to quit her job was for good cause attributable to the employer. An employee can certainly expect to be paid for hours worked, but occasionally mistakes with paychecks do happen. The employer has 650 employees on its payroll. Payroll is based off timecards, which are transferred to a worksheet and then sent to another individual who makes out the checks. Human error is possible. The claimant had had some other issues with shift differential, but those problems were addressed.

Although the administrative law judge understands that a paycheck that is less than it should be is upsetting, a mistake like this is not sufficient evidence to show a detrimental or hostile workplace. The employer would have made up the difference in the next paycheck. The claimant has not sustained her burden of proof to show that her workplace was so detrimental that good cause can be attributed to the employer for her resignation. Benefits are denied.

The next issue is overpayment of benefits.

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 overpayment issue is remanded to the Claims Section for determination.

DECISION:

The representative's decision dated March 11, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until 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 overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw