

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI A CAMPBELL
Claimant

APPEAL NO. 07O-UI-08742-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHITES IOWA INSTITUTE
Employer

**OC: 02/11/07 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Whites Iowa Institute filed a timely appeal from an unemployment insurance decision dated March 13, 2007, reference 01, that allowed benefits to Lori A. Campbell. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on July 16, 2007. Judge Elder's decision dated July 26, 2007 disqualified Ms. Campbell for benefits. Ms. Campbell filed an appeal with the Employment Appeal Board. In an order dated September 13, 2007, the Employment Appeal Board remanded the case for a new hearing. After due notice was issued, that hearing was held in Des Moines, Iowa, on October 26, 2007. Ms. Campbell participated on her own behalf and presented additional testimony by Patricia Walker. Associate Executive Director Peg DeArmond participated for the employer and presented additional testimony by a former employee, Theresa Pelican. Claimant Exhibits A through E and Employer Exhibits One through Five were admitted into evidence. The administrative law judge takes official notice of Agency benefit payment records.

ISSUES:

Did the claimant leave work with good cause attributable to the employer?

Has the claimant received unemployment insurance benefits which must be repaid?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lori A. Campbell was employed as a shelter youth worker by Whites Iowa Institute from June 25, 2005 until she resigned December 22, 2006. She was a full-time employee.

The final incident leading to the resignation occurred on the morning of December 22, 2006. Ms. Campbell's supervisor, Theresa Pelican, gave Ms. Campbell a warning because of absences. Ms. Campbell did not believe that she deserved the warning. She had provided a

doctor's excuse covering the three days that she was absent. Ms. Campbell told Ms. Pelican at that time that she was resigning.

Ms. Pelican and Ms. Campbell's relationship was difficult. Ms. Campbell was hired to work the overnight shift in youth shelter. Shortly thereafter, Ms. Pelican transferred her temporarily to the residential treatment center. This change in duties had Ms. Campbell working in the mornings as the residents, age ten to seventeen, were beginning their morning routines. Due to a medical condition, Ms. Campbell found it very difficult to understand the residents when they spoke to her. She requested a return to the quieter environment of the shelter. Ms. Pelican granted the request. Ms. Campbell worked in the residential treatment center from August 9 through September 12, 2005.

Ms. Campbell sensed a change in her relationship with Ms. Pelican after these events. In all, Ms. Pelican gave Ms. Campbell approximately five warnings, including the last one leading to the resignation. The warnings were related to job performance. Ms. Pelican's management philosophy is to make certain that her expectations were made clear and that employees subject to her supervision were held accountable for meeting the expectations. Ms. Campbell often disagreed with the warnings that she received.

The employer has specific rules for the handling of sharp objects such as knives and can lids. It also maintains specific rules concerning the accountability of keys to the facility. It requires an inventory of items brought back by residents who had been away from the facility. Other employees, not Ms. Campbell, sometimes violated these rules. This concerned Ms. Campbell greatly because of her hearing loss and because she worked alone. She brought these matters to Ms. Pelican's attention.

Ms. Campbell has received unemployment insurance benefits since filing a claim effective February 11, 2007.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. For the reasons which follow, the administrative law judge concludes that it does not.

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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. An individual may receive unemployment insurance benefits if the individual has resigned because of unsafe or intolerable or detrimental working conditions. See 871 IAC 24.26(2) and (4). On the other hand, an individual who resigns after being reprimanded is presumed to have left work without good cause attributable to the employer. See 871 IAC 24.25(29). Also, an individual who resigns because of dissatisfaction with the work environment or because of a personality conflict with a supervisor is presumed to have left work without good cause attributable to the employer. See 871 IAC 24.25(21) and (22).

As noted above, the final incident precipitating the resignation was the reprimand for attendance given to Ms. Campbell on the day she resigned. Much of Ms. Campbell's testimony centered on her relationship with Ms. Pelican. Having heard both the testimony of Ms. Campbell and Ms. Pelican, the administrative law judge concludes that while Ms. Pelican may have been an exacting supervisor, the record does not establish that she was unfair or that she singled out Ms. Campbell for especially harsh treatment.

More troubling is the evidence concerning potentially unsafe conditions in the workplace. Both parties agreed that Ms. Campbell's coworkers did not always follow the employer's policies concerning inventory, sharp objects and control of the keys. These lapses created potentially dangerous situations. The record establishes, however, that no actual harm came to Ms. Campbell as a result of this. In the case Ames v. Employment Appeal Board, 439 N.W.2d 669 (Iowa 1989), the Supreme Court of Iowa allowed unemployment insurance benefits to individuals who resigned rather than cross a picket line that had been the site of violent confrontations. It disqualified, however, claimants who resigned rather than cross picket lines that had not been the subject of violent confrontations. The court concluded that mere speculation of violence is insufficient to justify quitting. In the present case, there is no evidence of actual violence or actual danger arising from the lapses in the employer's safety policies.

Concerning each of the resignations separately and considering the totality of the circumstances, the administrative law judge concludes that the evidence falls short of establishing unsafe or intolerable or detrimental working conditions. Benefits must be withheld.

The claimant has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated March 13, 2007, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$6,256.00.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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