

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY S THOMPSON
Claimant

APPEAL NO. 12A-UI-14924-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 11/18/12
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated December 12, 2012, reference 01. The decision allowed benefits to the claimant, Kathy Thompson. After due notice was issued, a hearing was held by telephone conference call on January 24, 2013. The claimant participated on her own behalf. The employer participated by Administrator Tabatha Tjaden, DON Sarah Thomas, Cook Tiffany Douglas-Spuar and was represented by TALX in the person of David Williams.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Kathy Thompson was employed by Care Initiatives from February 7 until November 19, 2012 as a full-time dietary services manager. The facility was short staffed in the dietary department as well as some other areas. The claimant was having problems getting sufficient coverage for all the shifts in the kitchen. The administrator ran advertisements for additional staff in the kitchen but no one applied. One staff member was under a court order not to work at certain times and days because of custody issues she was facing. The employer had apprised the claimant of this at the time of hire.

Ms. Thompson's job was to cover the shifts as necessary with existing staff and keep overtime to a minimum by giving other days off or having staff leave early. Overtime had to be approved in advance and the claimant was never denied that approval. She was expected to fill in from time to time to assure the proper amount of staff in the kitchens.

On November 19, 2012, the claimant was trying to schedule the coming week and a cook, Tiffany Douglas-Spuar said she could not work some of the shifts because of the court order and refused to work certain times so she could "keep her kids." The claimant became irate and said she was "tired of this fucking job" and punched out. She came back later and filled out a written resignation. The administrator had left a message that she wanted to talk with the

claimant but was in a meeting at the time Ms. Thompson returned. The claimant left and did not return to attempt to resolve the problems.

Kathy Thompson has received unemployment benefits since filing a claim with an effective date of November 18, 2012.

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.

871 IAC 24.25(21) and (27) provide:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

(27) The claimant left rather than perform the assigned work as instructed.

The claimant quit because she refused to continue working and performing the essential functions of her job. It appears she had some expectations of the job duties which were not realized. The short staffing is something the employer attempted to correct by advertising for new employees but it is beyond the control of the employer that no one responded to the ads.

Ms. Thompson elected to quit rather than make a good-faith effort to consult with the administrator as requested to try and resolve the problems. The record establishes the claimant did not have good cause attributable to the employer for quitting and she is disqualified.

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 unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of December 12, 2012, reference 01, is reversed. Kathy Thompson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll