

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALLISON K WARREN**  
Claimant

**APPEAL NO. 10A-UI-14361-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHILDSERVE COMMUNITY OPTIONS INC**  
Employer

**OC: 08/29/10**  
**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated October 11, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 2, 2010. Employer participated by Katie Ceolla, Staff Relations; Luann Murgatroyd, Service Manager; and Emily Garcia, Site Supervisor. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Katie Ceolla; the testimony of Luann Murgatroyd; the testimony of Emily Garcia; and Employer's Exhibits 1-5.

**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 is a non-profit organization that provides services to children with special medical needs. The employer operates the Woodland Child Care Center. The claimant was hired on November 1, 2008, as a childcare supervisor.

The employer was in the process of implementing a change in its service. The change was from a childcare center to a habilitation center. The claimant's job title would change, but her responsibilities would remain the same. The claimant was scheduled to be on Family Medical Leave Act (FMLA) leave from August 10, 2010, until September 7, 2010, for the birth of her baby. The claimant's leave began earlier than expected on July 26, 2010. The employer did not have an opportunity to discuss the new service with the claimant before she left on FMLA leave.

On August 18, 2010, the employer did meet with the claimant to discuss the changes that were being made. The employer asked the claimant to log into its computer system to update her

original application so that her wage would properly reflect her experience and education. The claimant said she would take the re-titled position and update her personnel information.

The claimant changed her mind and submitted her resignation by email on August 30, 2010. The claimant thought she was going to have a change in her job duties and her pay. The employer responded back saying that her job duties would be the same and that she would still be a supervisor. The employer also told the claimant that her wages would not be reduced. The claimant still chose to resign.

## **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 in this case established that it was the claimant who initiated the separation of employment. The employer was implementing a change in the service provided to its clients and as a result, the claimant's job title changed. The claimant's duties, hours, and wages did not change. The claimant thought she would not like the job because she would be in the classroom 100 percent of the time and that her pay would be decreased. The employer then assured the claimant that she would not be in the classroom 100 percent of the time and that she would still have supervisory responsibilities. The claimant was also told that she would not have a wage reduction. In spite of these reassurances, the claimant elected to resign her position.

The administrative law judge concludes that the claimant's resignation was not for good cause attributable to the employer. Although the claimant's job title was changing, her duties, responsibilities, hours and wages were not changing drastically. Iowa law states that there must be a substantial change in the contract of hire before a resignation will be considered for good cause attributable to the employer. There was no substantial change to the claimant's contract of hire. The claimant voluntarily left without good cause attributable to the employer. 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 decision of the representative dated October 11, 2010, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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