

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY D BERRY**  
Claimant

**APPEAL NO. 16A-UI-08637-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GATEWAY TO DISCOVERY**  
Employer

**OC: 07/17/16**  
**Claimant: Respondent (2/R)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 1, 2016, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an agency conclusion that the claimant voluntarily quit on July 14, 2016 for good cause attributable to the employer. After due notice was issued, a hearing was held on August 25, 2016. Claimant Mary Berry participated. Attorney Stuart Cochrane represented the employer and presented testimony through Chris Helton, Monica Shelley and Joyce Garton-Nette. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibits One through 14 into evidence. The record of the July 29, 2016, fact-finding interview was not available at the time of the appeal hearing.

**ISSUES:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Gateway to Discovery is a small, faith-based, privately-funded recovery program established to provide recovery support services to victims of sex trafficking with substance abuse issues. The agency operates a recovery safe house and a studio where program participants learn job skills and produce items for sale to support the program.

Mary Berry was employed by Gateway to Discovery as the full-time Program Coordinator from November 2015 until July 13, 2016, when she voluntarily quit due to perceived intolerable and/or detrimental working conditions. Ms. Berry came to the program with decades of counseling experience, but with no experience as a program coordinator. Mr. Berry was responsible for running the residential aspect of the Gateway program. Ms. Berry was paid a \$35,000.00 annual salary. She was expected to work a 40-hour work week, but to be on-call after hours as needed. The employer did not provide health insurance as an employee benefit and this was a concern to Ms. Berry. Ms. Berry's program director responsibilities included helping the program participants establish and maintain a schedule, to facilitate participants'

scheduling and transportation to mental health and medical appointments, and to otherwise interact with participants in a manner that facilitated their progress through what was intended to be a two-year treatment program. For most of Ms. Berry's employment, the Gateway program only had three women participating in the residential program. During Ms. Berry's employment the program never had more than five women participating in the residential program. A volunteer board of directors oversaw Ms. Berry's work as Program Coordinator and Angela Fisher's work as Studio Coordinator. The board expected Ms. Berry and Ms. Fisher to cross-train one another. As part of her duties, Ms. Berry was expected to attend monthly meetings with the volunteer board of directors, to generate appropriate reports, and to write grants to secure additional funding for the program. The Board President, Chris Helton, functioned as Ms. Berry's immediate supervisor.

Ms. Berry announced her resignation at the board's monthly meeting on July 13, 2016. During the meeting, the board took Ms. Berry to task for not taking steps to master grant writing. Ms. Berry knew this was an area where she lacked experience. Ms. Berry had a friend who she hoped would assist her in mastering grant writing. The board was concerned that Ms. Berry was less than eager to master grant writing and was dragging her heels on learning how to draft grant applications. During the meeting, Mr. Helton told Ms. Berry that the board had heard "a hundred times" about Ms. Berry's plan to work on grants, and asked Ms. Berry when she was actually going to do it. Other board members questioned Ms. Berry about other matters for which Ms. Berry was responsible. During the meeting, Mr. Helton asked Ms. Fisher how the cross-training was going. Ms. Fisher asserted that Ms. Berry had "dropped the ball" on cross-training, but that the pair was making plans. Mr. Helton observed that communication had broken down between Ms. Berry and Ms. Fisher. At that point, Ms. Fisher opined that if Ms. Berry spoke to the program participants the way Ms. Berry spoke to Ms. Fisher, Ms. Fisher did not blame the program participants for not wanting to speak with Ms. Berry. At that point in the meeting, Ms. Berry became upset, announced that the board would have her resignation in the morning, and left the meeting. One of the board members attempted to get Ms. Berry to return to the meeting to continue "to work things out." Ms. Berry asserted that nothing would be worked out when the meeting was about her. Ms. Berry did not return to the meeting. The next morning Ms. Berry provided a cursory resignation memo and collected some of her personal effects from the workplace.

The worsening relationship between Ms. Berry and particular board members played out over the course of Ms. Berry's employment as it became more obvious to all, including, Ms. Berry, that she lacked the essential skills to perform the Program Coordinator duties. As the board expressed its concerns and, at times, its frustration, Ms. Berry felt unduly targeted for criticism. Ms. Berry's experience at the board's June 8, 2016 monthly board meeting also factored in her decision to leave the employment. Ms. Berry felt mocked and demeaned by Mr. Helton when he responded to her report of wasp nests that needed to be removed and her cost proposal for hiring someone to remove the nests. During the meeting, Mr. Helton stood, began to flail his arms and asserted that everything with Ms. Berry was a crisis. Mr. Helton referenced prior reports from Ms. Berry about a van that needed to be fixed and a door that needed to be fixed. Ms. Berry felt shut down by Mr. Helton when she attempted to respond to the criticism and Mr. Helton turned the discussion to Ms. Fisher and the studio operations.

Ms. Berry established a claim for unemployment insurance benefits that was effective July 17, 2016 and received benefits.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The weight of the evidence does not establish intolerable and/or detrimental working conditions that would have prompted a reasonable person in Ms. Berry's position to leave the employment. The employer had several legitimate concerns about Ms. Berry's work performance during the employment. The board's duty was to exercise oversight and address those concerns with Ms. Berry to better serve the needs of the program. Ms. Berry lacked the skill set to successfully perform the Program Coordinator duties. The board was understandably frustrated by Ms. Berry's lack of follow through on board concerns. Ms. Berry might have felt under fire by the board, and by Mr. Helton in particular. While the situation was uncomfortable for Ms. Berry, nothing in the board's conduct or in Mr. Helton's conduct rose to the level of intolerable or detrimental conduct.

Ms. Berry voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Berry is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Berry must meet all other eligibility requirements. The employer's account shall not be charged or benefits paid to Ms. Berry on or after the entry date of this decision.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

Because this decision disqualifies Ms. Berry for benefits, benefits Ms. Berry has received constitute an overpayment of benefits. Because the fact-finding materials were unavailable for the appeal hearing, this matter will be remanded to the Benefits Bureau for a decision regarding the overpayment amount, whether the employer participated in the fact-finding interview, whether Ms. Berry is required to repay the overpaid benefits, and whether the overpaid benefits may be assessed to the employer's account.

**DECISION:**

The August 1, 2016, reference 01, decision is reversed. The claimant voluntarily quit the employment on July 13, 2016 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged or benefits paid to Ms. Berry on or after the entry date of this decision.

This matter is remanded to the Benefits Bureau for a decision regarding the overpayment amount, whether the employer participated in the fact-finding interview, whether the claimant is required to repay the overpaid benefits, and whether the overpaid benefits may be assessed to the employer's account.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs