

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-11603-DWT
OC: 10/03/04 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Bryon E. Coon (employer) appealed a representative's October 18, 2004 decision (reference 01) that concluded Ashley M. Erdman (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 22, 2004. The claimant participated in the hearing. Philip Burian, attorney at law, represented the employer. Dyann Buhrman, a co-worker, and Beverlie Davis, the interim manager, testified on the employer's behalf. Based on the evidence, the arguments of the

parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in February 2004 as a home health care worker. The claimant worked third shift or 11:00 p.m. to 7:00 a.m. Prior to September 3, 2004, the claimant had not received any warnings or had any idea there were any problems with her job performance. Prior to September 3, the claimant understood she could sleep during her shift.

On September 3, 2004, the claimant was scheduled to work at 11:00 p.m. Around 9:30 p.m. Buhrman called the claimant and told her the employer no longer allowed her to sleep during her shift. Since this was the first time anyone told the claimant she could not sleep while working, the claimant became upset about this new rule. Buhrman understood the claimant was upset about the new rule and did not know if she would report to work that night or not.

The claimant did not report to work at 11:00 p.m. or notify the employer at anytime during her shift that she was unable to work as scheduled. Buhrman stayed at work until another co-worker came to relieve her. The claimant was not scheduled on September 4. By Sunday afternoon, September 5, the employer had already made arrangements for a new employee to work the claimant's shift on Sunday. When the claimant called Buhrman to see if she was still scheduled to work on Sunday, Buhrman indicated the employer already had the Sunday shift covered so the claimant did not need to work. The claimant learned she needed to contact Davis.

When the claimant and Davis talked the next day, the claimant asked if she could continue working for the employer. As of September 5, the employer no longer considered the claimant an employee. The employer understood she quit when she failed to work on September 3.

The claimant established a claim for unemployment insurance benefits during the week of October 3, 2004. She filed claims for the weeks ending October 9 through November 20, 2004. The claimant received her maximum weekly benefits amount of \$225.00 during each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The evidence indicates the claimant became upset and quit her employment on September 3 when she learned the employer would no longer allow her to sleep when she worked. This conclusion is supported by several facts. First, the claimant's mother did not consider her granddaughter so ill that she called and asked the claimant to come home early. If the claimant had not quit, there would be no reason for her to call Buhrman on Sunday to see if she was still on the schedule. The claimant's assertion that

her daughter was so sick that she had to go the emergency room, is not supported by any corroborating evidence. Finally, there was no reason for the claimant to initially tell the employer she could not work on September 3 because she had an argument with her husband, instead of just telling the employer she had taken her child to the emergency room about the same time she was scheduled to work. As a health care worker, it is not logical for the claimant to have become so distressed that she was unable to call the employer when she learned her child was ill.

When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2. The law presumes a claimant has quit without good cause when she leaves because she does not want to do her work in accordance with the employer's instructions. 871 IAC 24.25(27). A preponderance of the evidence indicates the claimant quit on September 3 after she was told for the first time she could not sleep during her shift. After the claimant calmed down, she tried to rescind her resignation on September 5 and 6. The employer had already accepted her resignation because her failure to report to work on September 3 disregarded the employer's interests. As of October 3, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not qualified to receive unemployment insurance benefits for the weeks ending October 9 through November 20, 2004. She has been overpaid \$1,575.00 in benefits she received for these weeks.

DECISION:

The representative's October 18, 2004 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of October 3, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending October 9 through November 20, 2004. She has been overpaid and must repay \$1,575.00 in benefits she received for these weeks.

dlw/pjs