

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDY GOKE
Claimant

APPEAL NO. 08A-UI-08396-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AREA RESIDENTIAL CARE INC
Employer

OC: 07/20/08 R: 12
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 12, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 2, 2008. Claimant Judy Goke participated. Teri Pitzen, Human Resources Director, represented the employer and presented additional testimony through Dara Fishnick, Director of Intermediate Care Facility for Mentally Retarded. At the request of the claimant, the administrative law judge took official notice of the Agency administrative file documents submitted for or generated in connection with the fact-finding interview and marked Department Exhibits D-1 through D-14 for identification purposes. Exhibits 1 through 25 were received into evidence.

ISSUE:

Whether Ms. Goke'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: The employer provides services to individuals with mental disabilities. Judy Goke was employed by Area Residential Care (ARC) from July 5, 2006 until July 21, 2008, when she voluntarily quit. Ms. Goke had started the employment as a nursing services assistant. Ms. Goke's immediate supervisor was Kathy McKeever, Professional Services Director. In December 2006, Ms. Goke became a member of the employer's human rights committee. The human rights committee was charged with investigating and taking action to resolve client rights violations reported by clients or staff. On or about June 29, 2007, Ms. Goke became the full-time professional services coordinator. In this position, Ms. Goke supervised two nursing services assistants, supervised physical therapy/occupational therapy services and prepared diet plans with a dietitian. Ms. McKeever continued as Ms. Goke's immediate supervisor. Ms. McKeever subsequently recommended Ms. Goke for the position of co-chair on the employer's human rights committee. Ms. McKeever was the other co-chair. In May 2008, the employer's associate director and executive director removed Ms. Goke from the human rights committee. Ms. Goke's removal from the human rights committee occurred after the employer concluded that Ms. Goke, and possibly others, had mishandled a complaint by not following and fully

implementing the employer's human rights procedures. Ms. Goke's removal from the human rights committee caused the employer to re-evaluate Ms. Goke's skill set.

In May 2008, the employer notified Ms. Goke that it was reorganizing the Professional Services Department and was going to change the professional services coordinator position to professional services supervisor. The professional services supervisor position would be a leadership position at ARC. The professional services supervisor would have significantly expanded supervisory skills. The employer made it clear to Ms. Goke that it did not think she had the necessary skill set for perform the duties of the changed position. The employer encouraged Ms. Goke to consider other, lower positions the employer had open. Ms. Goke and the employer entered into an agreement whereby Ms. Goke would "try out" a position in the physical therapy/occupational therapy area. Ms. Goke continued with the title and salary of professional services coordinator while she oriented to the physical therapy/occupational therapy area. After that area proved not to be a good fit, Ms. Goke transferred to a full-time instructor position on June 23, 2008. At that time, Dara Fishnick, Director of Intermediate Care Facility for Mentally Retarded, became Ms. Goke's immediate supervisor.

On June 4, 2008, Ms. McKeever and Teri Pitzen, Human Resources Director, reprimanded Ms. Goke for alleged insubordination. On May 28, Ms. McKeever had contacted Ms. Goke to say she and another director would be meeting with Ms. Goke the next day to discuss her performance. At the time of the call, Ms. Goke was orienting to the physical therapy/occupational therapy area. Instead of waiting for the meeting, Ms. Goke contacted the associate director and requested a meeting. The associate director said she would meet with Ms. Goke after Ms. Goke first met with Ms. McKeever. Ms. Goke then contacted the executive director and requested a meeting with him. The employer reprimanded Ms. Goke for failing to follow the established chain of command.

On June 9, 2008, Ms. McKeever and Ms. Pitzen issued a second reprimand to Ms. Goke for giving a chocolate shake to a client as a reward for cooperating with a difficult and painful medical appointment. Milk shakes were specifically included as a motivator or reward in the client's written positive reinforcement plan. However, the client suffered from GERD, which was aggravated by milk products and caffeine. The employer concluded that Ms. Goke should have known from her time as professional services coordinator that the client should not be given a chocolate shake.

On July 17, 2008, the employer issued a final reprimand to Ms. Goke. The reprimand was based two incidents. On July 1, 2008, Ms. Goke had failed to take appropriate steps to protect a client in care from harm when another client assaulted the client in Ms. Goke's care. Ms. Goke had left the client in a room with other clients and staff and had to be summoned back to the room to care for her client. On July 5, Ms. Goke had negligently placed a client's leg braces on the wrong feet, even though the braces were labeled left and right. This conduct caused pain and discomfort to the client and resulted in one or more sores on the client's legs. The client indicated a problem with the braces by attempted to grab her leg. Ms. Goke removed the brace, examined the leg, and put the brace back on the wrong leg.

Ms. Goke erroneously concluded that reprimand issued on July 17 was motivated by the employer's desire to harass her. Ms. Goke erroneously concluded that the reprimand was a response to human rights complaints and/or abuse reports Ms. Goke had made concerning other staff and clients. Ms. Goke notified her immediate supervisor that she was going to commence a leave of absence until her grievance concerning the alleged harassment was resolved. Ms. Goke submitted a request for a leave of absence to the executive director, who indicated he would respond with an answer within a week, pursuant to the employer's

established procedures. Ms. Goke immediately commenced an unapproved leave of absence and was absent from her next two shifts without notifying the employer.

On Monday, July 21, Ms. Goke's supervisor contacted Ms. Goke and told her that she needed to report for work or the employer would deem her to have abandoned her position. Two no-call/ no-show absences were deemed job abandonment under the employer's attendance policy. Ms. Goke told her supervisor that she would just quit the employment. Ms. Goke delivered a written resignation in which she alleged harassment.

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.

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).

Where an employee voluntarily quits in response to being reprimanded, the employee is presumed to have voluntarily quit. See 871 IAC 24.25(28)

The weight of the evidence in the record fails to establish that the July reprimand was in any way motivated by an intention to harass Ms. Goke. The evidence indicates instead that the reprimand was prompted by two instances in which Ms. Goke was negligent and, as a result, the client in her care suffered. The weight of the evidence indicates that Ms. Goke's unapproved leave of absence and voluntary quit were both in response to the reasonable reprimand the employer had issued on July 17, 2008.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Goke's voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Goke is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Goke.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant

acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representatives September 12, 2008, reference 01, decision is reversed. The claimant voluntarily quit the employment 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, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css