

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**VANESSA R HOOVER**  
Claimant

**HGI LAKESIDE LLC**  
Employer

**APPEAL 17A-UI-06013-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/07/17  
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

HGI Lakeside, LLC (employer) filed an appeal from the June 1, 2017, reference 03, unemployment insurance decision that allowed benefits based upon the determination Vanessa R. Hoover (claimant) voluntarily quit work due to a change in her contract of hire which was a good cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on June 28, 2017. The claimant participated. The employer participated through Director of Human Resources Sondra Romeo and was represented by Thomas Kuiper of ADP Inc. and Talx UCM. No exhibits were offered or received into the record. Official notice was taken of the administrative record, specifically the fact-finding documents.

**ISSUES:**

Did the claimant voluntarily quit the employment with good cause attributable to the employer?  
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Cook beginning on June 16, 2016, and was separated from employment on October 7, 2016, when she quit. The claimant was hired by her supervisor David Laszczak to work eight hours shifts, five days a week. She worked the swing shift and her scheduled shift began at 2:00 p.m.

In July 2016, the employer needed to have employees work some overtime. The claimant usually worked between five and nine hours of overtime a week. She also usually left between 10:00 and 11:00 p.m., although occasionally she would work until 12:30 a.m. In September 2016, the claimant returned to school. She told Laszczak that due to her school

schedule she could not work until 3:00 p.m. and she could no longer work overtime. However, Laszczak did not change the claimant's schedule or reduce her overtime.

After October 3, 2016, the last day she worked, the claimant missed a day of work as a no-call/no-show absence because class ran long. She reported to the Human Resources office on October 7, 2016. She submitted her resignation to Laszczak stating that due to her hours which he refused to change, she was falling behind in school and was too tired to go to school after working.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,093.00, since filing a claim with an effective date of May 7, 2017, for the seven weeks ending June 24, 2017. The administrative record also establishes that the employer did not participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

Iowa law disqualifies individuals who voluntarily quit work without good cause attributable to the employer from receiving unemployment insurance benefits. Iowa Code § 96.5(1). Individuals who quit due to a dislike of their shift, for personal reasons exceeding ten days, or to attend school are presumed to have quit without good cause attributable to the employer. See Iowa Admin. Code r. 871-24.25. If an individual voluntarily quits due to a change in the contract of hire, then the separation is considered to be with good cause attributable to the employer. Iowa Admin. Code r. 871-24.26(1). However, the change in contract must be substantial and not a minor change in the individual's routine. *Id.*

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The claimant contends her contract of hire changed as she was required to regularly work until 2:00 a.m. and work six days a week. The claimant testified she was working over 60 hours a week. This change began in July 2016, but once she started back to school, it became difficult for her to work that often. The employer denies that the claimant's hours changed substantially and the claimant only worked five to nine hours of overtime a week with her latest shift ending at 12:30 a.m.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of the claimant's hours to be more credible. The employer witness reviewed the claimant's timesheets which are documents kept during the normal course of business. The claimant was also unable to provide any specific details as to the dates she worked her extended hours.

The claimant's contract of hire did not substantially change. She was hired into a full-time position. She was to begin work at 2:00 p.m. and work eight hours a day. Five to nine hours of overtime a week is a minor change to the hours for which she was hired. More importantly, the change began in July 2016 and the claimant did not object until she returned to school. The claimant requested a change to the schedule for which she was hired and, when her request was denied, the claimant chose school attendance over employment. While the claimant's decision to leave her employment may have been based upon good personal reasons and her desire for continued education is admirable, her leaving was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law 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. Iowa Code § 96.7. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. Iowa Admin. Code r. 871-24.10(1). The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did not participate in the fact-finding interview, the claimant is not obligated to repay to the agency the benefits she received and the employer's account shall be charged.

#### **DECISION:**

The June 1, 2017, reference 03, unemployment insurance decision is reversed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as 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 claimant has been overpaid unemployment insurance benefits in the amount of \$2,093.00, but is not obligated to repay the agency those benefits. The employer did not participate in the fact-finding interview and its account shall be charged.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed  
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