

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA DOWNING**  
Claimant

**APPEAL NO: 10A-UI-08686-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PHIPPSBURGER INC/ACCESSIBLE HOME  
HEALTH CARE OF DES MOINES**  
Employer

**OC: 10-25-09**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 8, 2010, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held before Administrative Law Judge Julie Elder in Des Moines, Iowa, on July 26, 2010. The claimant participated in the hearing with Attorney Joel Baxter. Angie Burger, Administrator, participated in the hearing on behalf of the employer. Claimant's Exhibits A, B-1 and B-2 and Employer's Exhibits One through Three were admitted into evidence.

**ISSUE:**

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a live-in home health aide for Accessible Home Health Care of Des Moines from July 17, 2009 to June 18, 2010 (Employer's Exhibit Three). She submitted her resignation on that date in a letter stating "due to circumstances beyond my control I am giving my resignation..." (Employer's Exhibit Three). At the time of hire the claimant indicated she wanted to work live-in, 24 hour per day positions because she lives in Guthrie Center and most of the employer's clients are in Des Moines and the immediate area. It is rare for the employer to get requests for live-in aides. The claimant worked a live-in position for one week in September 2009 and another from December 5, 2009 to April 15, 2010. She worked a case in Marshalltown, Iowa, April 25, 2010, but declined to return to work that case due to the driving distance involved. The claimant did accept a weekly position for seven hours per week in Elkhart, Iowa, but the employer did not have any other requests for live-in help and believed the claimant was not interested in shorter term assignments. The claimant was not available for the other types of assignments the employer generally had available that other aides were willing to do, as she did not wish to drive from Guthrie Center for assignments less than eight hours at a time, and preferred at least 24 hours per day four to seven days per week. The claimant

testified she resigned because of “too many lies and (she) was told too many different things.” The employer did not guarantee the claimant a certain number of hours and the claimant never asked the employer for additional work nor did she speak to her between April 30 and June 14, 2010. The employer was not aware the claimant was interested in additional work and or that she resigned “just because (she) was not happy with (her) employer.”

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(16), (18) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

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 from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant is a home health aide and prefers to work live-in positions because she lives in Guthrie Center. The employer was willing to, and did,

accommodate her requested schedule when it had live-in assignments available. That was rare, however, and the claimant did not communicate her desire to work other, shorter assignments, to the employer or communicate with her at all between April 30, 2010 and her resignation date of June 18, 2010. She was not willing to work the assignments the employer had available and the claimant was aware most of the employer's clients were in the Des Moines metro area when she accepted the position with the employer. Additionally, the employer never guaranteed the claimant a certain number of hours per week and the claimant unduly limited her availability for work in the home health care field. The claimant has not demonstrated that her leaving was for good cause attributable to the employer or that she was able and available for work to the extent required under the law. Therefore, benefits are denied.

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. 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. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The June 8, 2010, reference 03, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer and is not available for work in her customary occupation. 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 received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs