

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI L SMITH
Claimant

APPEAL NO. 07A-UI-10518-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTERN HOME COMMUNITIES INC
Employer

OC: 10/14/07 R: 03
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Western Home Communities (employer) appealed a representative's November 9, 2007 decision (reference 01) that concluded Terri Smith (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 30, 2007. The claimant participated personally. The employer participated by Kim Schilling, Director of Human Resources; Lisa Hoodjer, Administrator; Jane Herrera, Director of Nursing; Brandy Rolf, Assistant Director of Nursing; and Kirsten Baker, Nurse Schedule Supervisor.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 22, 2007, as a part-time licensed practical nurse. The claimant signed for receipt of the employer's handbook on July 7, 2007. The employer has a policy that an employee will be considered to have quit if the employee is absent for three days without giving notice to the employer.

The claimant brought narcotic count discrepancies to the employer's attention prior to October 17, 2007. On October 17, 2007, the employer notified that it had to meet with the claimant about those discrepancies before she could return to work. The employer and claimant met on October 17, 2007. During the meeting the employer told the claimant she could chose to return to work that night or she could have the time off and return to work on October 18, 2007. The claimant indicated she was too upset to return to work on October 17, 2007.

The employer expected the claimant to appear for work on October 18, 20, and 21, 2007. The claimant did not. The employer sent the claimant a letter informing her that she was considered

to have quit work because she failed to appear for work or notify the employer of her absence for three days.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the employer's testimony to be more credible because the employer provided two eyewitnesses to support its case.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was absent from work for three days without giving notice to the employer. The employer has a rule that if the employee is absent without notice to the employer for three days the employee is deemed to have voluntarily quit. The claimant is deemed to have voluntarily quit based on her absence from work for three days without giving notice to the employer. There is no evidence of good cause attributable to the employer.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's November 9, 2007 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,190.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css