

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

JENNIFER PETSCHÉ  
PO BOX 456  
FAYETTE IA 52142

GOOD SAMARITAN SOCIETY INC  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-11541-BT  
OC: 10/02/05 R: 04  
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, 4<sup>th</sup> 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 is 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96 5-2-a - Discharge for Misconduct  
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. (employer) appealed an unemployment insurance decision dated November 2, 2005, reference 01, which held that Jennifer Petsche (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2005. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Bonnie Hageman, Director of Nursing; Jane Mohror, Interim Administrator; and Mary Heller, Office Manager. Employer's Exhibit One was admitted into evidence.

#### 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 as a part-time certified nurse's assistant on November 18, 2004. She became full-time and continued in that capacity until she voluntarily quit her employment on May 21, 2005. The claimant had a significant absenteeism problem and frequently called in to report her absences. She subsequently had two no-call/no-shows, which occurred within her last four months. The claimant stated she wanted additional hours but refused or failed to report for the extra shifts. She called the employer on the evening of May 20, 2005 and stated it was not working out for her. The claimant did not report to work after that even though she was scheduled to work on six additional dates. Continuing work was available.

The claimant filed a claim for unemployment insurance benefits effective November 2, 2005 and has received benefits after the separation from employment in the amount of \$1,568.00.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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.

An employee quits her job only if she intends to quit and carries out that intent by some overt act. Peck v. Employment Appeal Bd., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out when she told the employer on May 20, 2005 that it was no longer working out and failed to show up for work after that date.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She failed to participate in the hearing and has not satisfied that burden. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated November 2, 2005, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,568.00.

sdb/tjc