

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANDA BELL
Claimant

APPEAL NO. 07A-UI-09991-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC
Employer

**OC: 09/23/07 R: 04
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Community Care, Inc. (employer) appealed an unemployment insurance decision dated October 18, 2007, reference 01, which held that Shanda Bell (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 14, 2007. The claimant participated in the hearing. The employer participated through Carol Wells, Jennifer Komadino, Lisa Wenzel, Lynee Stortz, and Margaret Sherwin. Employer's Exhibits One through Four and Claimant's Exhibits A through C were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

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 employed as a full-time living assistant who provided daily care to disabled individuals from July 24, 2006 through July 12, 2007. She resigned on July 17, 2007 and contends she quit due to intolerable and detrimental working conditions as a result of disrespect from her direct supervisor. The claimant had problems with her supervisor as far back as September 2006. The supervisor gave the claimant a birthday card and thanked the claimant for helping her step back and look at herself. The claimant introduced the birthday card apparently to demonstrate the supervisor admitted she was wrong. The claimant also introduced a three-page written warning she received on October 25, 2006. As opposed to proving she was treated unfairly, the warning clearly identifies how difficult it was to work with the claimant.

On an unknown date, the supervisor handed out a list including all employees' names, addresses, and telephone numbers. The claimant reasonably felt this was inappropriate, but

the supervisor distributed the information anyway. The supervisor subsequently changed the claimant's address to a post office box, as opposed to her physical address. The claimant stated it did not matter, since the original list had previously been distributed. It does not appear the supervisor distributed the list to upset the claimant but because she mistakenly thought it was a good idea.

The next issue occurred on June 30, 2007, when the claimant was trying to get an individual to come back inside the facility from where he was on the sidewalk outside. The claimant had difficulty with the individual and eventually told the individual to "get his ass inside now." She reported it to her supervisor on July 2, 2007 and was told to write an incident report and bring it with her weekly documentation. When the claimant arrived to meet with her supervisor, she was advised the supervisor had to write her up. The claimant began to cry and provided several examples of other employees saying worse comments than she did. The supervisor reportedly stated that write-ups were within her discretion and she was not going to write up the claimant at that time. However, she was going to meet with the resident, who later claimed that he was afraid of the claimant. The supervisor directed the claimant not to deal with this individual any more to avoid further problems.

A regular staff meeting was held on July 11, 2007. Prior to the staff meeting, the claimant had reported to her supervisor that a co-employee was over-medicating a resident. The supervisor reported that she would talk to the co-employee, but the claimant felt like nothing was done. During the meeting, the supervisor began discussing complaints and asked what they could do as a group to unify the work site. The claimant spoke out about another employee and said that he needed to stop being the residents' friend and needed to quit being "an old softy." The co-worker became upset and tried to leave; he said that the claimant was not going to disrespect him like that. The claimant went on and said that since they were all adults, she should be able to say what she did. The supervisor intervened and told her that was enough and the claimant argued back. The claimant walked out of the meeting and said that she knew that she would probably receive a write-up but did not care.

At the end of the day on July 12, 2007, the supervisor told the claimant she needed to be at a meeting on the following morning on July 13, 2007. The claimant called the human resources specialist and complained about her supervisor and said that she wanted to further talk with her about the supervisor. The next morning, the supervisor was not at the meeting but the human resources specialist and the director met with the claimant. The claimant felt the director was rude to her, but she went ahead and explained how the supervisor was unprofessional. She provided examples, but the director commented that she had not seen these things. The director further asked how they could handle things since the supervisor was not going anywhere. The claimant was asked to meet with them again on July 16, 2007. The claimant, the human resources specialist, and the assistant director met and the claimant was asked to explain the problems. She was given two written warnings and she refused to sign them. The claimant was asked what she thought she was doing wrong and she stated nothing but that she was being disrespected. The supervisor was later called in the room, but the claimant felt the supervisor was being disrespectful to her while the claimant was trying to talk. The claimant decided there was no point to the meeting and walked out. The employer stated they wanted to work things out and the claimant said she would think about it. She later called and gave her verbal resignation.

The claimant filed a claim for unemployment insurance benefits effective September 23, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. 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.

Iowa Code § 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.

871 IAC 24.25(22), (28) 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 § 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 § 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:

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

The claimant contends she quit due to an intolerable and detrimental work environment. However, some of the claimant's documentary evidence more accurately depicts that she was a difficult employee, as opposed to proving she was mistreated by her supervisor. Granted, the supervisor clearly made mistakes in her management style and even admitted that fact, but there is no evidence of any ill will towards the claimant. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). The claimant had a personality conflict with her supervisor and quit after she was issued two written reprimands, which she felt were not warranted. It is her burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not met her burden and benefits are denied accordingly.

Iowa Code § 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 October 18, 2007, 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 \$2,611.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw