

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTNIE L JACKSON
Claimant

APPEAL NO. 09A-UI-15240-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 09/13/09
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated October 6, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 9, 2009. Claimant participated. The claimant was represented by Evelyn Ocheltree, Attorney at Law. Employer participated by Michelle Lawson, Director of Nursing; Sarah Ward, Licensed Practical Nurse; and Shanna Laughton, Administrator. The employer was represented by Lynn Corbeil, Attorney at Law. The record consists of the testimony of Brittanie Jackson; the testimony of Michelle Lawson; the testimony of Sarah Ward; the testimony of Shanna Laughton; Claimant's Exhibit A; and Employer's Exhibits 1-6.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and
Whether there has been an overpayment of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a provider of long-term nursing care. The claimant was originally hired on August 1, 2008, as a part-time cook. In February 2009, the claimant started working as a certified nursing assistant. She was still a part-time employee but did work a few more hours per week than she had as a cook.

On July 23, 2009, the claimant wrote the following note to Michelle Lawson, the director of nursing:

I am giving my 2 week notice. My last day would be August 6th, but I will work until Monday August 10th. I will gladly stay PRN, as long as you give me 24 hr notice.

(Exhibit 1)

The claimant gave this notice because she wanted to find another job. She was planning to move but agreed to go PRN (*Pro re nata* – commonly used to mean "as needed") basis provided she was given the twenty-four notice as she would be living further from the facility. The claimant's resignation was accepted by the employer.

On August 1, 2009, the claimant was involved in a non-work-related automobile accident. As a result, she was unable to work. The claimant called the employer the next day and informed the employer of her situation. The claimant had a doctor's excuse to be off work. She was released by a physician on August 20, 2009. The claimant had been given work for August 29, 2009 and August 30, 2009, by the employer. Although the claimant had been released by her physician, she called the employer and spoke to Sarah Ward, LPN, on August 28, 2009. She told Ms. Ward that she was being kept off work by her physical therapist and would not be able to work these two shifts. Ms. Ward told the claimant that she needed to contact the director of nursing to discuss this situation. The claimant did not call Ms. Ward until September 14, 2009. She was informed that the employer considered her to be a voluntary quit since she had not contacted the employer concerning her status.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant did quit her regular full-time job with CHC as of August 10, 2009. The employer's agreement to continue her employment after that date was only on a PRN basis, not as a full-time employee. There is no guarantee of hours on PRN status. The claimant also limited her availability by requiring a twenty-four notice. In addition, the claimant was recovering from an automobile accident and it is not entirely clear when she was available for work as there is a discrepancy between her physician's note and what she was told by her physical therapist.

When the claimant submitted her resignation, which was accepted by the employer, she entered a new period of employment under a new contract of hire. The claimant was told on August 28, 2009, that she needed to be in contact with the director of nursing to update her status. The claimant failed to do so until she called on September 14, 2009. The claimant felt it was the employer's responsibility to call her. The claimant cannot reasonably claim that the employer was responsible for calling her since she had been specifically informed that she needed to update her status with the director of nursing. The employer could reasonably conclude that the claimant no longer wanted to work PRN given this lack of contact. Accordingly, the evidence established that the claimant quit her job as a PRN employee. Benefits are denied.

The next issue is overpayment of benefits. Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

- a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

This matter is remanded to the Claims Section for determination of any overpayment.

DECISION:

The decision of the representative dated October 6, 2009, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. This matter is remanded to the Claims Section for determination of any overpayment.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css