

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHERINE L STOOPS
Claimant

APPEAL NO. 10A-UI-04750-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 02/28/10
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's March 24, 2010 decision (reference 01) that concluded Katherine Stoops (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 June 16, 2010. The claimant participated personally. The employer was represented by Lynn Corbeil, Attorney at Law, and participated by Larke Payne, Licensed Practical Nurse/Charge Nurse; Amy Higgins, Licensed Practical Nurse/Charge Nurse; and Tiffany Stansberry, Director of Nursing/Registered Nurse. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 November 13, 2008, as a full-time certified nursing assistant. The claimant signed for receipt of the employer's handbook on November 13, 2008. She understood that she had to report her absences prior to the start of her shift and find a replacement. The claimant had been absent before and demonstrated that she knew the proper reporting procedure. The claimant chose to work a regular schedule of 2:00 p.m. to 10 p.m. and 10 p.m. to 6:00 a.m. every Saturday and Sunday.

On February 20, 2010, the claimant called the employer stating she had a migraine and was going to the emergency room. The employer told the claimant to let the Director of Nursing know. The claimant knew she had to find a replacement. The claimant thought she left a message for the Director of Nursing but no message was left. The claimant could not find another person to work her shift. The claimant did not call the employer back to relay that information. On February 21, 2010, the claimant did not appear for work or notify the employer of the absence. She was absent because her daughter was at the emergency room until 6:30 p.m. The claimant thought she would tell the employer about her situation the next time

she worked. The employer left two messages for the claimant but the claimant did not get the messages. A co-worker texted the claimant a message that the claimant was terminated. The claimant knew that the co-worker did not have the authority to terminate but did not question the message.

The claimant did not appear for work or notify the employer of her absence on February 27, 28, March 6 or 7, 2010. On March 10, 2010, the claimant picked up her paycheck. She did not provide the employer with any doctor excuses. Continued work was available had the claimant not resigned.

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.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant stopped appearing for work and answering the telephone. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

DECISION:

The representative's March 24, 2010 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 issue of the overpayment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs