

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA NEWSOM
Claimant

APPEAL NO. 10A-UI-08584-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBS STAFFING LLC
Employer

OC: 04-11-10
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 16, 2010, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 3, 2010. The claimant participated in the hearing. Brad Ortmeier, Owner, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time CNA for CBS Staffing from February 9, 2010 to March 25, 2010. The claimant submitted her resignation via e-mail March 25, 2010, effective immediately. One reason she gave the employer for leaving was that she found another position more conducive to her school and family schedule (Employer's Exhibit One). Actually, she did not have another job but did not want the employer to "try to talk (her) into staying." The real reason she left, and one she also explained in her e-mail to the employer, was that she felt she was not accurately paid for her work. The employer's pay plan states that if an employee works in home health care, she will be paid \$11.75 or \$12.75 per hour; and if an employee works in a hospital/facility, she will be paid \$12.75 or \$14.75. The issue with the claimant's pay resulted from a conversation with the office manager where she was told she would be paid \$14.75 per hour to work as a home health care CNA in Ames. The claimant believed she was being paid that amount because a certified aide was required rather than a regular home health aide. The employer was unaware of the conversation, as he was out of town when it took place. The claimant received her regular check but was not paid \$14.75 per hour for the Ames job. She did not notice the error until after she received her first two checks for the Ames job and at that time she notified Owner Brad Ortmeier of the situation. He told her he would look at it as soon as he could; but, when he had not resolved the situation within two weeks, she submitted her resignation notice effective immediately March 25, 2010. Mr. Ortmeier did speak to the

office manager, who was unsure if she told the claimant that would be her hourly wage, and then he compared the claimant's hours to her first check from the Ames job and sent her a second check for \$60.50 gross to make up the difference in wages between what she was told she would be paid and what she was actually paid.

The claimant has claimed and received unemployment insurance benefits since her separation from the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2. In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving the employment. Deshler Broom Factory v. Kinney, 140 Nebraska 889, 2 N.W.2d 332 (1942). The case herein can be distinguished from Deshler, as the employer in this case paid the claimant what he truly believed she was owed at the time she was owed and was not aware his office manager told the claimant she would be paid at a higher rate or at a rate higher than even allowed for the type of work she was doing until later. It was not unreasonable for the employer to want to check into the claimant's allegations of what she should be paid when it was that much higher per hour than usually paid to a CNA working in home health care. Additionally, there was no pattern of the employer failing to pay the claimant's wages when due. Because the claimant was given the regular rate of pay at the time it was due and it was not irrational for the employer to want to check her facts and figures before deciding to pay her, rather than refuse to pay her the higher rate at all, the administrative law judge must conclude the claimant has not demonstrated that her leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of

determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The June 16, 2010, reference 02, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw