

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH DIKIS**  
Claimant

**APPEAL NO. 13A-UI-13249-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACTIVE FAMILY CHIROPRACTIC & WELL**  
Employer

**OC: 11/10/13**  
**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated December 2, 2013, reference 01, which held the claimant eligible to receive unemployment insurance benefits from November 3, 2013 through November 9, 2013, because the employer terminated the claimant's employment prior to the effective date of her resignation. After due notice was provided, a telephone hearing was held on December 19, 2013. The claimant participated. The employer participated by Dr. Colby Nelson, Practice Owner.

**ISSUE:**

The issue is whether the claimant voluntarily left employment on November 1, 2013 with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Sara Dikis was employed by Active Family Chiropractic from June 2013 until November 1, 2013 when she voluntarily left her employment. Ms. Dikis was initially hired to work as a part-time practice representative but subsequently accepted the full-time position of chiropractic assistant. The claimant was paid by the hour. Her immediate supervisor was the practice owner, Dr. Colby Nelson.

At the time of hire the parties agreed that the claimant's services would not be permanent employment. The claimant had other skills by training and was attempting to secure full-time employment in other occupational fields and the employer in turn, planned on utilizing the claimant's services until a permanent chiropractic assistant could be hired. The claimant was looking for other employment, in turn, the employer was also seeking to hire a permanent chiropractic assistant.

Because of a number of complaints about Ms. Dikis' attitude by patients, Dr. Nelson chose to counsel Ms. Dikis on October 26, 2013 about the complaints and also indicated that he would be renewing his efforts to find a permanent replacement in the future.

The following Monday, October 28, 2013, Ms. Dikis provided a two-week notice of her intention to leave her employment with Active Family Chiropractic. Ms. Dikis then worked on October 29,

30 and 31. On November 1, 2013, she made arrangements to start babysitting for another individual who was going to replace her at Active Family Chiropractic and the parties mutually agreed that November 1, 2013 would be the last day that she would be reporting for work at the chiropractic office.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the claimant's separation from employment on November 1, 2013 was because the employer chose to discharge the claimant prior to the proposed date of her resignation or whether the claimant chose to leave employment that date. The claimant chose to leave employment and was not discharged by 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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.25(38) 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 section 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 section 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

In this matter the claimant had been hired to work in a temporary capacity while she sought employment in her own field and the employer sought to hire a permanent chiropractic assistant. The employer was aware that Ms. Dikis was looking for other work and would accept other employment in her occupation and field if she found it. Ms. Dikis was also aware that the employer was in the process of attempting to hire a permanent chiropractic assistant to formally fill the position of an employee who had previously left. On October 26 the employer informed Ms. Dikis of some issues and explained that the employer would be renewing its efforts to hire a

permanent replacement at some point in the future. The counseling given to Ms. Dikis was both reasonable and work related and the employer was merely restating its intention to hire a permanent replacement in the future. After considering the matter, Ms. Dikis initially decided to give a two-week notice of her intention to resign but later made the leaving effective November 1, 2013, as it was more convenient to leave at that time.

For the reasons stated herein the administrative law judge concludes that the claimant was not discharged by the employer November 1, 2013 but that the claimant voluntarily left employment on that date. The claimant's election to leave work earlier than her initial notice period was by the claimant's choice and not because the employer had elected to discharge her at that time.

The claimant left work voluntarily without good cause attributable to the employer on November 1, 2013. Unemployment insurance benefits are withheld for that week. Because the claimant has been deemed ineligible for benefits any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment and whether the overpayment will be repaid by the claimant or charged to the employer's account based upon the employer's participation in fact finding on this matter. .

**DECISION:**

The representative's decision dated December 2, 2013, reference 01, is reversed. The claimant voluntarily quit employment on November 1, 2013 without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant has been overpaid unemployment insurance benefits, the amount of the overpayment and whether the claimant will have to repay the benefits or the benefits will be charged to the employer's account based upon the employer's participation in fact finding is remanded to the Claims Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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