

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SAMANTHA L BROWN**  
Claimant

**APPEAL NO. 11A-UI-12292-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESLEY RETIREMENT SERVICES INC**  
Employer

**OC: 08/14/11**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated September 9, 2011, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 11, 2011. Claimant participated. Employer participated by Margot Voshell, director; Betty Stone, director of human resources; and Dee Gibbs, event coordinator. The record consists of the testimony of Samantha Brown; the testimony of Margot Voshell; the testimony of Betty Stone; and the testimony of Dee Gibbs.

**ISSUES:**

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid 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 is a home health care agency. The claimant was hired on February 10, 2010, as a home care aide. The claimant was a certified nursing assistant. A home health care aide provides services in the community. The claimant also did work in the office such as processing doctor's orders, scheduling visits, and making charts. The claimant never worked exclusively in the office. The claimant's last day of work was August 14, 2011. She voluntarily resigned her position on August 15, 2011.

On August 15, 2011, the claimant met with Margot Voshell. There was a critical need for home care aide work. Ms. Voshell told the claimant that she (Ms. Voshell) would assume the office responsibilities so that the claimant could work out in the community. The claimant was guaranteed the same hours, the same wages, and the same schedule, which was Monday

through Friday from 7:00 a.m. or 7:30 a.m. to 3:00 p.m. or 3:30 p.m. The claimant would not be required to work on the weekends or nights.

### **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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The greater weight of the credible evidence in this case is that the claimant initiated the separation of employment. She elected to quit her job after she was informed that more of her time would be scheduled in the field. The claimant was hired as a home health care aide. She also did work in the office and the percentage of time in the office versus the field tended to vary. The employer had a critical need for more staff to work in the field and the claimant was informed that her office duties would be assumed by the director. The claimant decided to quit.

The claimant testified that she quit because she needed full-time hours and that home health care aides did not work 40 hours per week. She did not want to work weekends and nights. She did not want to take a reduction in salary. This testimony is not credible. Ms. Voshell said she told the claimant that her hours would remain the same, her schedule would be the same, and her pay would be the same. She would not have to work weekends and nights. She would get the same hourly wage. She would get 40 hours per week. The administrative law judge concludes that the real reason the claimant quit was that she preferred to work in the office, even though she had been hired as a home care aide and had never exclusively worked in the office.

Under certain circumstances, a voluntary quit will be deemed for good cause attributable to the employer. One of those circumstances is a change in the contract of hire. There was no change in the contract of hire in this case, because the claimant was hired as a home health care aide and worked as a home health care aide even though she also had duties in the office. In addition, a change in the contract of hire must be substantial before good cause is attributable to the employer. The evidence in this case showed that the employer may have modified the claimant's duties but there was no drastic change, nor was there any change in hours, wages, or schedule. The claimant's subjective belief that she was going to have to work weekends or take a pay cut is not supported by the credible evidence in this case.

An employer has the right to assign work to employees. The claimant made the decision that she did not want to do the work assigned, even though she had been hired to do that work. The claimant has not shown that she quit for good cause attributable to the employer. 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.

The overpayment issue is remanded to the Claims Section for determination.

**DECISION:**

The representative's decision dated September 9, 2011, reference 02, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/kjw