

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REBECCA M ARMAN
Claimant

CARE INITIATIVES
Employer

APPEAL 19R-UI-05106-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/17/19
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On April 25, 2019, Care Initiatives (employer) filed an appeal from the April 18, 2019, reference 02, unemployment insurance decision that allowed benefits based upon the determination Rebecca M. Arman (claimant) voluntarily quit after experiencing sexual harassment which she reported and the employer did not correct. On May 1, 2019, a hearing notice was mailed to both parties for a hearing scheduled on May 20 at 1:00 p.m. The employer did not respond to the hearing notice and register a phone number. As a result, a default decision was issued. The employer appealed the default decision to the Employment Appeal Board (EAB) who remanded the case as the employer had not received the original hearing notice.

The parties were properly notified about a new hearing which was held by telephone on July 24, 2019. The claimant did not respond to the hearing notice and did not participate. The employer participated through Director of Nursing Bridget Hinds and Assistant Director of Nursing January Cole. Administrator Billy Meyers was sworn in as a witness but did not provide any testimony. The employer was represented by Alyce Smolsky from Talx. The Employer's Exhibits 1 through 3 and the Department's Exhibit D1 were admitted into the record. The administrative law judge took official notice of the claimant's claim history.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Certified Nursing Assistant, Certified Medications Assistant, and Personal Service Attendant beginning on October 17, 2014 and was separated from employment on November 23, 2018, when she quit.

The claimant and her supervisors, Director of Nursing Bridget Hinds and Assistant Director of Nursing January Cole, were friends outside of work. The three were also friends with other co-workers. During her employment, the claimant had expressed frustration with her co-worker Kayla, but had never stated she was being sexually harassed by Kayla. The claimant could have brought concerns to Hinds, Cole, Administrator Billy Meyers, or the Human Resources hotline. The claimant did not file complaints or raise any concerns regarding sexual harassment during her employment.

On November 23, the claimant notified Hinds and Cole via text message that she was quitting. She told Hinds she was quitting because she just could not take it. When Hinds asked for more details, the claimant refused to give her any. The claimant told Cole she was leaving because she hated her job, had "a lot going on," and she was sick. (Exhibit 2) She felt others were upset that she was calling in sick as she had come down with the gastro-intestinal bug that had been going around work. Cole told her that others were not upset. She stated that the claimant was an excellent employee and asked if she needed assistance finding another job. The claimant declined Cole's offer of assistance.

The administrative record reflects that the claimant has not received unemployment insurance benefits since filing a claim with an effective date of March 17, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 Admin. Code r. 871-24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

In this case, the claimant submitted her resignation via text message and the employer accepted her resignation, which is presumed to be a voluntary quit without good cause attributable to the employer. The claimant has not provided evidence to show she left employment due to intolerable and detrimental working conditions, which is her burden. The employer provided first-hand, unrefuted testimony that the alleged incidents of sexual harassment described by the claimant during her fact-finding interview did not occur. The claimant voluntarily quit without good cause attributable to the employer. Accordingly benefits are denied.

As the claimant has not received any unemployment insurance benefits to date, the issues of overpayment and the chargeability of the employer's account based on participation in the fact-finding interview are moot.

DECISION:

The April 18, 2019, reference 02, unemployment insurance decision is reversed. The claimant voluntarily left the 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 issues of overpayment and the chargeability of the employer's account based on participation in the fact-finding interview are moot.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn