IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 05A-UI-06197-DT
OC: 05/08/05 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

Opportunity Village (employer) appealed a representative's June 7, 2005 decision (reference 01) that concluded Dawn S. Seidel (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 30, 2005. The claimant participated in the hearing and was represented by Adam Zaiger, legal intern. Tracy Mattson appeared on the employer's behalf and presented testimony from one other witness, Renee Hildeman. During the hearing, Claimant's Exhibits A and B were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on August 28, 2001. She worked full time as a personal assistant in the employer's human services agency providing assistance to persons with disabilities. Her last day of work was May 10, 2005. She voluntarily quit on May 11, 2005.

The claimant was assigned five service consumers. Her primary consumer was a young woman with Down's syndrome who was assigned to the claimant in approximately mid-February. The claimant spent approximately half her time with this consumer. By approximately mid-March, the claimant began encountering difficulties with the consumer, such as the consumer being rude and disrespectful. The claimant met with her area coordinator, Ms. Hildeman, as well as an outcome coordinator, trying to find some avenue to deal with the consumer's situation. By approximately mid-April, the employer had determined to insist that the consumer and her family agree to a behavior contract providing terms under which the claimant or other personal assistant could give the consumer notice of non-compliance and then remove themselves from the consumer's home. The consumer's family signed and returned the agreement to the employer on May 6, 2005.

In the time prior to the family's acceptance of the agreement, the claimant continued to express frustration with the consumer's behavior and a desire to be reassigned, but in each discussion she had ultimately agreed to wait and try to see how things worked once the behavior contract went into effect. The claimant only worked with the consumer about five days under the behavior contract. The only notable incident that occurred during those five days was that on May 8, 2005, the claimant was running errands with the consumer and was running behind schedule. She asked the consumer if the consumer would mind stopping at another apartment facility at which another of the claimant's consumer's lived in order for the claimant to explain to that consumer that she was running late. The consumer agreed, but asked to also go in, supposedly to visit a female friend in the building. The claimant assented, and left the consumer in a group area where the female friend was present. The consumer did not stay and visit with that female friend, however, but rather immediately went to another apartment in the building where a male friend lived. The consumer's family did not want the consumer to visit that male friend. The claimant retrieved the consumer after a few minutes, but the incident was later reported to the employer as a complaint.

On May 10, 2005 the claimant left a note for her supervisor, Ms. Hildeman, stating that she no longer wished to be assigned to the consumer's care. On May 11, 2005, Ms. Hildeman contacted the claimant about the May 8 incident. The claimant acknowledged the occurrence, and stated that she was not coming back, ending the call. On May 12, 2005, the claimant again spoke with Ms. Hildeman, as the claimant realized, through another contact, that Ms. Hildeman did not understand she was not returning for any consumers. Ms. Hildeman was attempting to have the claimant come in to further discuss the May 8 incident regarding the consumer. She told the claimant she was removing the consumer from the claimant's responsibility, but that there was still a disciplinary issue to be addressed. The claimant clarified that it did not matter, that she was not coming back at all for any consumers.

The claimant asserted that she had lost over 20 pounds due to stress between mid-February 2005 and her departure May 11, 2005. She asserted that the responsibility for this consumer and the employer's failure to sooner remove her from responsibility for this consumer had caused the stress. She did see a doctor on June 2, 2005, who diagnosed the claimant with anxiety and depression. Based upon the claimant's post-employment explanation of the situation with the consumer, the doctor concluded that the claimant's condition had been caused by her employment. The employer was aware the claimant was under some stress, but

believed that it was at least substantially related to non-work related issues. The claimant did not specifically discuss her medical condition with the employer prior to May 12, 2005, or indicate that she would quit unless the work-related source of the stress, the consumer, was removed from her responsibility. She had not exercised the employer's grievance process and gone to Ms. Hildeman's supervisor, Ms. Mattson, to complain about not having the consumer removed sooner from her responsibility.

The claimant asserted that another reason for her reason for quitting was that her pay status was uncertain. Originally, the claimant and other employees were paid for their time whether they were able to provide services to the consumers or not. However, in late 2004, the pay policy was changed so that if the personal assistant was unable to provide services, for example, if the consumer were not home, the personal assistant would not be paid for that time. The claimant asserted that there may have been times in 2005 that she did not receive pay because she could not provide services, but she did not provide any specific instances; the employer indicated that it was only aware of one day where the claimant did not provide services and did not receive pay, which was a day the employer had suspended services to the consumer until the consumer's family returned the signed behavior contract.

The claimant established a claim for unemployment insurance benefits effective May 8, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of $1,004.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Code Section 24.26(6)b 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:
>
> (6) Separation because of illness, injury, or pregnancy.

> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant has not presented competent evidence showing that, prior to quitting, she had adequate health reasons to justify her quitting. Even accepting the claimant's doctor's post-employment evaluation, before quitting, the claimant did not inform the employer of the work-related health problem and inform the employer that she intended to quit unless the problem was corrected or reasonably accommodated. In order for a reason for a quit to be attributable to the employer, an individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996), Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant did not provide this notice and opportunity to the employer. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

Iowa Code section 96.3-7 provides:

> 7. Recovery of overpayment of benefits. 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.
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> 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's June 7, 2005, decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of May 11, 2005, benefits are withheld until such time as 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. The claimant is overpaid benefits in the amount of $1,004.00.

ld/kjw