

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL R WHITE
Claimant

APPEAL NO. 07A-UI-00819-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOREAU CHIROPRACTIC CLINIC PC
Employer

**OC: 12/17/06 R: 01
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Moreau Chiropractic Clinic PC (Moreau), filed an appeal from a decision dated January 18, 2007, reference 01. The decision allowed benefits to the claimant, Jill White. After due notice was issued, a hearing was held by telephone conference call on February 7, 2007. The claimant participated on her own behalf. The employer participated by President Bill Moreau and Office Manager Karen Moreau. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Jill White was employed by Moreau from March 24, 2000 until November 22, 2006. She was a chiropractic assistant who also did some massage therapy under the doctor's auspices. Ms. White was working five days per week prior to going on maternity leave October 11, 2006. Before the leave began the claimant had talked with Office Manager Karen Moreau and several of her co-workers and stated she was only going to work three days per week after she returned to work from the leave.

On November 20, 2006, the claimant called and spoke with Ms. Moreau to ask if she could come back to work with her hours as they were before she went on leave. She was told the schedules had been rearranged to cover the two days per week when she would not be working and those hours were no longer available. Ms. White consulted with her husband and then notified the employer she could not return to work three days per week because of the cost of daycare.

Jill White has received unemployment benefits since filing a claim with an effective date of December 17, 2006.

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.

The claimant quit because she could not afford daycare for her children working only three days per week. However, the reduction in her hours had been at her request prior to going on maternity leave. At no time prior to November 20, 2006, had she notified the employer she had changed her mind and intended to come back as a full-time employee. By the time she did notify the employer of this, her hours had already been distributed to other employees and were no longer available.

The administrative law judge considers that the change in the contract of hire was done at the request to the claimant. The fact she later changed her mind and wanted full-time hours, which the employer was unable to accommodate, does not constitute good cause attributable to the employer.

Ms. White also asserted her massage therapy duties had been removed but this is not the case. She is not a licensed massage therapist but did "prep" massages for the employer's clients. This was still available to her, but the massages would have occurred in another room from where she had been accustomed to performing them. A minor change in location does not constitute a substantial change in the contract of hire.

The record establishes the claimant quit without good cause attributable to the employer and she is disqualified.

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.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 18, 2007, reference 01, is reversed. Jill White is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$97.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css