

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ADRIANA I ANDRADE
Claimant

APPEAL 18A-UI-11494-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN HOMES SOCIETY
Employer

**OC: 11/04/18
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin r. 871-23.43(5) – Charges – Sole purpose, other/better
Iowa Admin Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
Iowa Admin r. 871-24.25 – Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

Lutheran Homes Society, Employer, filed an appeal from the November 20, 2018 (reference 01) unemployment insurance decision that found claimant was eligible for benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 13, 2018 at 1:00 p.m. Claimant did not participate. Employer participated through Kaylyn Powers, human resources. Employer's Exhibits 1 through 9 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct or a voluntary quit without good cause attributable to the employer.

Whether claimant has been overpaid benefits.

Whether claimant should repay benefits and/or employer should be charged due to participation in fact finding.

FINDINGS OF FACT:

As employer was the only witness, the administrative law judge makes the following findings of fact based solely upon employer's testimony and exhibits: Claimant was employed full-time as a certified nursing assistant from January 30, 2018 until her employment with Lutheran Homes Society ended on October 30, 2018, when claimant offered her resignation to the assistant administrator via telephone. Claimant did not provide employer with a reason for her resignation. Employer accepted claimant's resignation. There was continuing work available to claimant.

The administrative record reflects that claimant has neither filed for nor received unemployment insurance benefits, since filing her original claim on November 4, 2018. The administrative record also reflects that employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged, but voluntarily quit without good cause attributable to employer. Benefits are denied.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer. Iowa Code § 96.6(2).

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.

Claimant tendered her resignation on October 30, 2018; employer accepted her resignation. Claimant has not met her burden of proving "good cause" attributable to employer. Claimant voluntarily quit her employment without good cause attributable to employer. Benefits are denied.

Because no benefits were paid to claimant, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The November 20, 2018 (reference 01) unemployment insurance decision is reversed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount. The issues of overpayment, repayment and chargeability are moot.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs