

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTI L DYER
Claimant

APPEAL NO. 07A-UI-09777-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANIMAL RESCUE LEAGUE OF IOWA INC
Employer

**OC: 09/16/07 R: 02
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Animal Rescue League of Iowa (employer) appealed a representative's October 10, 2007 decision (reference 02) that concluded Kristi Dyer (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 5, 2007. The claimant participated personally. The employer participated by Josh Colvin, Operations Manager; Gregory Berry, Associate Veterinarian; Janet Bush, Animal Care Supervisor; and Sarah Walker, Human Resources Specialist.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 4, 2006, as a full-time animal care technician. The employer informed the claimant at the time she was hired that she might have to assist the veterinarian with euthanasia of canines. None of the workers wanted to assist but it was part of the work of the facility.

At the beginning of her employment a co-worker was assisting the veterinarian with euthanasia but that person stopped working for the employer in March. The claimant assisted in euthanizing at three to five dogs per day. The claimant tried to talk the veterinarian out of putting some dogs down and cried during the procedure. The claimant did not appear for work again after April 7, 2007. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

The administrative law judge finds the claimant voluntarily quit work without good cause attributable to the employer.

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.

871 IAC 24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

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). The claimant's intention to voluntarily leave work was evidenced by her actions. She walked off the job and quit work. When an employee quits work rather than perform the assigned work, her leaving is without good cause attributable to the employer. The claimant left work rather than perform the job assigned by the employer. In this case the work assigned by the employer was emotionally difficult but part of the work of the facility. The claimant knew she might have to assist in holding the dogs during euthanasia. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are 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.

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 benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's October 10, 2007 decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,242.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs