

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY TRAMMELL
Claimant

APPEAL NO. 07A-UI-05652-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EMPLOYMENT SERVICES
Employer

**OC: 05/06/07 R: 04
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 22, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 21, 2007. Claimant participated. Employer participated through Bill Rose and Jennifer Egesdal. Claimant's Exhibit A was received. Employer's Exhibit 1 was received.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time RN from October 2006 until May 3, 2007, when she quit. She alleges that employer underpaid her for hours worked and that she was not paid her shift differential from her hire date to the end of 2006. Employer did pay her the shift differential back pay on December 13, 2006 and paid her the shift differential from that date forward. (Claimant's Exhibit A, p. 5) She then believed she was not being paid for the full amount of hours worked (see example pay stub at Claimant's Exhibit A, p. 28). Claimant thought she should have been paid for 159.19 total hours or 88.08 total hours (per handwritten figure); however, she could not have reasonably worked 159.18 hours in a two-week period, as that would require working 11.37 hours for 14 days straight or 15.92 hours per day for 10 of 14 days. Furthermore, claimant presented no independent evidence that she actually worked more than the hours for which she was paid. Egesdal explained to claimant in December 2006 that the additional hours listed under regular pay/hours were the specific number of hours worked, out of the 80.48 hours worked in the two week pay period for which she received additional pay for overtime (7.6 hours), evening shift differential (21 hours), and night shift differential pay (50.1 hours). Claimant last spoke to Egesdal about her pay concerns in December 2006 and said she had no further questions. There was no threat to quit or other questions posed to Egesdal after that.

In March 23, 2007 claimant was a no-call, no-show for two consecutive shifts and a staff member saw her at a bar. Employer terminated the employment on March 26, 2007 and rehired her in April 2007. She was a no-call, no-show for April 30 and May 5, 2007. Claimant may have lost some hours of pay because she reported for work an hour or more late many days. Rose also came in at midnight to speak to her on May 2, 2007 about her attendance and about her wage questions. (Employer's Exhibit 1) She told him she understood and never returned to work thereafter.

Claimant has received unemployment benefits since filing a claim with an effective date of May 6, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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(4), (13), (28) 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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(28) The claimant left after being reprimanded.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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). 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. *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993).

Not only did claimant not establish that she was underpaid for any of her work hours, overtime, or shift differentials, she failed to report for work for three consecutive work days after a

reprimand, which renders her separation a voluntary leaving of employment without good cause attributable to the employer. Benefits are denied.

Iowa Code § 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.

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

DECISION:

The May 22, 2007, reference 01, decision is reversed. Claimant voluntarily left her 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. Claimant is overpaid benefits in the amount of \$1,776.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw