

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNNA M SWAILES
Claimant

APPEAL NO: 13A-UI-01652-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BICKFORD SENIOR LIVING GROUP LLC
Employer

OC: 01/13/13
Claimant: Respondent (2/R)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 5, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit for reasons that qualify her to receive benefits. The claimant participated in the hearing. Megan Johnson, the director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in December 2009. Initially, the claimant worked as a full-time nurse aide. In October 2012, Johnson offered the claimant the job as the kitchen manager and a \$2.40 hour raise. The claimant accepted the kitchen manager position as of October 29, 2012.

Johnson completed the necessary forms and faxed information to corporate payroll that the claimant was the kitchen manager at Johnson's facility and would receive a \$2.40 an hour raise as of October 29, 2012. The first paycheck the claimant received after becoming the kitchen manager did not reflect her raise. The claimant went to Johnson when her November 9 paycheck did not reflect her raise. Johnson told the claimant it could take some time for raises to show up and her raise would probably be on her next paycheck. The claimant's raise was not on any of her next paychecks.

When the claimant's December 7 paycheck did not reflect her \$2.40 an hour raise, she again went to Johnson. When Johnson told the claimant her raise would probably be on her next paycheck, the claimant did not trust the employer and doubted she would get her raise. After the claimant indicated she would have to quit if she did not get her raise, Johnson responded by telling her that if was going to leave, she should leave. The claimant then walked out.

Johnson contacted corporate payroll and learned the claimant's pay status that she had faxed in late October had not been received by payroll. She then gave payroll the information to pay the claimant an additional \$2.40 an hour since October 29, 2012.

When the claimant walked out on December 7, she did not return. The claimant established a claim for benefits during the week of January 13, 2013.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, she has the burden to establish she has good cause to quit. Iowa Code § 96.6(2).

The law presumes a claimant quits with good cause when she leaves because of a substantial change in her employment. 871 IAC 24.26(1). Johnson's first response to the claimant inquiry about her pay raise was reasonable. Since Johnson had faxed information to corporate payroll to increase the claimant's hourly pay by \$2.40 as of October 29, it was reasonable that it may take time for payroll to adjust the claimant's wages. Johnson does not remember if the claimant talked to her more than two times about her raise. But she does remember the claimant talking to her about problems with her pay raise again on December 7, 2012.

Instead of immediately checking with corporate payroll to find out why the claimant had not yet received her raise, Johnson again told the claimant her raise would probably be on her next paycheck. Since the claimant had worked since October 29 as the kitchen manager, she doubted she would get her raise and threatened to quit. Johnson did not appreciate the claimant's comment. After Johnson learned the claimant still had not received her raise, she contacted corporate payroll and learned they had not received the claimant's pay upgrade information in late October. Johnson again provided payroll information about the claimant's raise.

Since the claimant had worked for the employer since December 2009 and there were no apparent problems between the claimant and Johnson, the claimant's decision to walk out on December 7 before either she or Johnson contacted payroll about her raise again does not establish good cause for quitting. As of January 13, 2013, the claimant is not qualified to receive benefits.

This matter will be remanded to the Claims Section to determine if the claimant had been overpaid for any benefits she may have received since January 13, 2013, or if she is eligible for a waiver of any overpayment.

DECISION:

The representative's February 5, 2013 determination (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of January 13, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment and whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since January 13, 2013, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs