

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**NORMA L DAVIS  
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FORT MADISON IA 52627**

**GREAT RIVER MEDICAL CENTER  
HUMAN RESOURCES DEPARTMENT  
1221 S GEAR AVE  
WEST BURLINGTON IA 52655 1679**

**Appeal Number: 04A-UI-08007-H2T  
OC: 06-27-04 R: 04  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 16, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 16, 2004. The claimant did participate. The employer did participate through Karen Darnell, Manager of Registration and Switchboard, and (representative) Terry Buck, Human Resources Generalist.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a switchboard operator part time beginning December 13, 1999 through May 31, 2004 when she voluntarily quit her job. On September 9, 2003 the claimant

asked to have her hours reduced because she was diagnosed as suffering from breast cancer and would need to undergo treatment. No physician put in writing that the claimant should reduce her hours or that she should quit her job. The claimant told Karen Darnell that she wanted to quit her job. Ms. Darnell encouraged the claimant to apply for FMLA, which would have preserved her job or to just try to continue working. The claimant was specifically offered the opportunity to apply for FMLA but choose not to apply because she wanted to receive her paid time off (PTO) in a lump sum. The claimant did receive her PTO in a lump sum payment.

Thereafter, the claimant continued to work throughout the fall of 2003 on an as needed basis as she had requested. When the claimant asked to have her hours reduced to an 'as needed' or 'prn' status, she was told that in the future she would have to bid into future jobs. The only reason the employer reduced the claimant's hours was because the claimant asked to have them reduced. The claimant was not guaranteed that she could have her old job or regular shift back whenever she decided she wanted it back. The employer gave the claimant the option to protect her job and her shift by taking FMLA but the claimant chose not to take FMLA. In January 2004, the claimant asked to have her hours increased back up to the level where she was working prior to October 2003. The employer told the claimant she would have to wait to bid on an open job when one became available. The claimant quit because she wanted more hours on the day shift.

The claimant has received unemployment insurance benefits after the separation.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2 (amended 1998).

When the claimant went to the employer in the fall of 2003 with her initial request for a reduction in hours, the claimant was specifically told she could apply for FMLA which would protect her job. The claimant chose not to apply for FMLA because she wanted to receive her PTO in a lump sum. When the claimant chose not to apply for FMLA, she was told that she would have to bid into an open job if she wanted her hours increased. When the claimant decided in January 2004 that she wanted her hours increased, she was told that she needed to bid into an open job. The claimant had been given the opportunity by the employer to protect her job back in the fall of 2003 but chose not to take it. It was not unreasonable for the employer to ask the claimant to comply with the FMLA in order to protect her job. The employer did not have hours to provide for the claimant in January 2004 when she wanted to increase her hours, so the claimant quit. Under these circumstances, when the employer had provided the claimant with every opportunity to protect her job, the employer's inability to provide the claimant with increased hours was not good cause attributable to the employer for the claimant's quit. 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.

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

DECISION:

The July 16, 2004, reference 01, decision is reversed. The 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. The claimant is overpaid benefits in the amount of \$1,128.00.

tkh/tjc