

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

KIMBERLY K STEINLAGE
2475 - 160TH ST
NEW HAMPTON IA 50659

COMMUNITY CARE INC
1611 – 330TH AVE
CHARLOTTE IA 52731

Appeal Number: 04A-UI-12113-SWT
OC: 10/10/04 R: 03
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 29, 2004, reference 01, that concluded the claimant, Kimberly Steinlage, voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on October 29, 2004. The parties were properly notified about the hearing. Steinlage participated in the hearing with a witness, Peg Brummond. Jess Thronson participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Kimberly Steinlage worked full time for the employer as a residential aide from July 1, 2004, to October 12, 2004. Jess Thronson, the administrator, was her supervisor. Steinlage worked in a residential care facility for adult residents with mental disabilities. Steinlage was informed and

understood that residents could sometimes be verbally and physically aggressive, and she received training on handling residents in such situations.

On October 9, 2004, Steinlage was working in the facility with one other aide caring for 27 residents. There was also one kitchen aide on duty. That morning the other aide took a couple of residents to scheduled doctor's appointments, which left Steinlage to care for the remaining residents. She had instructed one of the residents, Tom, to remove his soiled bed linens and take them to the laundry to be washed. Tom became agitated at Steinlage's request. He became verbally abusive. He began screaming and directed harsh profanity at her. He started punching at her with his fist. He hit her in the mouth, which split her lip and loosened one of her teeth.

After getting the resident to return to his room, Steinlage called Thronson. Thronson asked whether she needed medical attention and wanted to go home. Steinlage said no. She asked Thronson if she could call the police to press charges against the resident. Thronson told her that she had the personal right to file criminal charges, but the employer would not do so because it was inconsistent with the employer's goals. Thronson told Steinlage that she would send backup staff right away and Steinlage should document the incident. Thronson sent backup staff, and Steinlage finished her shift without further incident.

Tom is a resident known to the employer as an individual with problems controlling his temper and impulses. He has displayed verbal aggression toward others in the past, including outbursts of profanity, which is why he works in a sheltered workshop rather than a job in the community. About a month earlier, Steinlage and Tom had a disagreement over an assigned task in which Tom was verbally abusive and hit Steinlage on the shoulder. Steinlage also reported the incident to Thronson. As a consequence for his actions, Tom had some activities restricted. After this incident, Thronson and Steinlage had discussed Steinlage not working directly with Tom, but they had mutually decided to leave things as they were. Tom has no history of physical aggression against anyone else.

Steinlage worked on October 11. She discussed the incident with Tom personally with Thronson. Thronson told her that there would be a team meeting later that week to discuss the incident and to decide what to do. On October 12, Steinlage was in charge of monitoring the lunchroom, which included monitoring Tom. During the lunch hour, Tom tried to hit Steinlage again but was not successful. Steinlage left work at 3:30 p.m.

As a result of what happened on October 9 and 12, 2004, and the past incident of physical aggression, Steinlage was afraid of Tom and what he might do in the future. She did not want to be hit again so she decided to quit her employment. She called Thronson at 4:30 p.m. and told her about the incident that day. She notified Thronson that she was quitting immediately because she was afraid of Tom. Thronson told Steinlage that the employer did not want to lose her as an employee and asked if there was anything the employer could do to get her to stay. Thronson suggested a meeting with the social worker, Steinlage, and Tom to try to resolve the problems. Steinlage did not think that a meeting would resolve her problems so she told Thronson that she had made up her mind to quit.

The claimant filed for and received a total of \$1,042.00 in unemployment insurance benefits for the weeks between October 10 and December 4, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Steinlage voluntarily quit 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 unemployment insurance rules provide that a claimant who leaves employment due to unsafe or intolerable working conditions has left with good cause attributable to the employer and is qualified to receive benefits. 871 IAC 24.26(1) and (4).

The Iowa Supreme Court in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993), established requirements for proving a quit was with good cause when an employee quits due to intolerable working conditions. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that she intends to quit if the condition is not corrected. Id. at 448.

The Iowa Court of Appeals in Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa App.1996), imposed these same requirements in a case remarkably similar to this one in which a claimant quit due to unsafe working conditions. In Swanson, the claimant was involved in a physical altercation with another employee. Her attorney wrote to the employer relating the incident and reminding the employer of the duty to provide a safe workplace. After a second altercation with the same employee, the claimant submitted a resignation stating her concern for her physical safety and the employer's inability to correct the situation. The Court of Appeals concluded that despite the letter from the attorney, the claimant did not have good cause to quit employment under the reasoning in the Cobb case and Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993) (a case involving a work-related injury) because neither the claimant nor her attorney notified the employer of her intention to quit if the alleged problem was not corrected. Swanson, 554 N.W.2d at 297.

Likewise, Steinlage voluntarily quit employment without advance notice that she intended to quit if the alleged unsafe working conditions were not corrected. Furthermore, the employer asked Steinlage if there was anything the employer could do to get her to stay, but she did not pursue this option and refused to continue in employment. Under the precedent and reasoning of the Swanson case, the evidence fails to establish that the claimant quit employment with good cause attributable to the employer.

The next issue is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,042.00 in benefits for the weeks between October 10 and December 4, 2004.

DECISION:

The unemployment insurance decision dated October 29, 2004, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$1,042.00 in unemployment insurance benefits, which must be repaid.

saw/tjc