

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI K MELCHERT
Claimant

APPEAL NO. 06A-UI-09783-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADRIAN P REHAK DDS
Employer

**OC: 09-03-06 R: 03
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 28, 2006, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 18, 2006. Claimant participated. Employer participated through Adrian Rehak, Andrea Ortismon and Linda Martin. The administrative law judge took judicial notice of the administrative record.

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 dental hygienist from March 13, 2004 until September 2, 2006 when she quit.

Rehak chastised claimant for not answering the phone when she did not have a patient and reminded her he wanted her to be in the office to perform other duties even if she did not have a patient. She became upset, told Rehak she was leaving and did not return for the remainder of the workday. She cancelled the patients' appointments for the afternoon. Employer had moved her from an hourly wage to commission about nine months prior to the separation and removed vacation days at that time. At that point she was only in the office if she had patients scheduled. There was talk of making her an independent contractor but no date had been set. She was most recently paid a percentage of what income she produced plus a percentage of what the office made with a minimum of \$30.00 per hour when she was in the office. The administrative record reflects claimant was paid more in each of the last two quarters of employment than in any other quarter of the employment history.

In late July or early August, employer thought there was an agreement she would be present during office hours but she left the office with openings in her schedule when she could have

called people for fill-in appointments. There was one other occasion when claimant became upset and walked out of the office when patients were scheduled.

Claimant has received unemployment benefits since filing a claim with an effective date of September 3, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left her 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(6), (13), (18), (21), (22), (27) and (28) provide:

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:

(6) The claimant left as a result of an inability to work with other employees.

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

(18) The claimant left because of a dislike of the shift worked.

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

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

(28) The claimant left after being reprimanded.

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). Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

While there were multiple and confusing changes over the last year of employment, which were not reduced to writing, and because of that, many apparent misunderstandings between claimant and Rehak, rather than attempt to communicate to resolve the questions, claimant would leave the office without resolution. Since claimant was being paid at least as much as she was under earlier arrangements and was being paid for all hours worked, employer had the right to expect her to be in the office during office hours and performing other duties between patients or scheduling fill-in patients. Just because she was being paid by commission does not relieve her of office hours. Similarly if a commissioned car salesperson does not keep regular office hours, it greatly reduces car sales. Claimant's cancellation of patient appointments and leaving after Rehak instructed her to stay in the office between patients and help answer the phone was sufficient evidence of intention to quit the employment after a reprimand, which is not considered a good cause reason attributable to the employer for leaving. 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 September 28, 2006, reference 02, 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 \$1,336.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/cs