

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LADONNA POGGENPOHL

Claimant

APPEAL NO. 06O-UI-09477-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINDERWORLD LEARNING CENTER INC

Employer

**OC: 06-18-06 R: 03
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 24, 2006, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 24, 2006. The claimant participated in the hearing. Missy Butcher, Owner/Director; Brittney Starbuck, Lead Teacher in the Toddler Room; Crystal Cordon, Lead Teacher in the Infant Room; and Amanda Tincher, Assistant Teacher in the Toddler Room, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time teacher in the toddler room for Kinderworld Learning Center from August 22, 2005 to November 3, 2005. At the time, the claimant had a two-year old child who attended the daycare at a discount because she was an employee. She voluntarily left her position because she felt her son was being mistreated by other employees. She testified that one day one of the teachers yanked her son's arm while they were outside causing him to fall and did not help him up. The teachers deny the accusation. On another occasion the class was having Sheppard's Pie for lunch. The claimant's son wanted more but there was only enough for each child and teacher to have one serving. Her son was upset and the teachers tried to redirect him to eat the other items on his plate. The claimant was also upset and believed the teachers should not have eaten until the children had second helpings. The infant room was next to the toddler room and the door between the two rooms was often open. The claimant felt that the teachers in the toddler room "yelled" at the children too often. The teachers testified they sometimes raised their voices to get a child's attention and occasionally yelled to prevent one from hurting another but did not make it a practice to yell at the children. The claimant also testified about a situation where her son was outside and wanted to ride on the merry-go-round. The teacher told him he needed to wait until there was room for him and

the claimant's son had "a fit." When an opening became available the teacher tried to put the claimant's son on the merry-go-round but he was still upset and would not get on so they put another child on instead. The claimant was also upset that her son had not been moved to the two to three-year old room. The employer explained that decision is made by age and when there are openings and it did not have any openings at that time. The claimant complained about her son's treatment to Owner/Director Missy Butcher on several occasions and Ms. Butcher spoke to the teachers. Ms. Butcher's son was in the same class as the claimant's son and she did not find the claimant's accusations to be accurate. On November 3, 2006, the claimant did not show up for work. She called Ms. Butcher at 4:00 p.m. and notified her she was resigning her position because she felt her son was being mistreated. Ms. Butcher had scheduled a meeting between the claimant and the two teachers in the toddler room for that day but the claimant was not at work and testified she thought meeting would only make the matter worse.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). 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. The claimant was upset about the way her son was treated by the daycare providers. The incidents she testified about, however, were credibly explained or refuted by the employer and it seems the claimant may have been overly sensitive about the situations she described. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App.1973). The claimant complained to Ms. Butcher who addressed each situation with the staff but the claimant was not satisfied. While the claimant was working at the daycare because she received a discount on childcare, it seems her recourse was to remove her son from the daycare as her complaints were not about her employment per se. Consequently, the administrative law judge concludes the claimant voluntarily left her employment and has not demonstrated that her leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, 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 24, 2006, reference 03, decision is affirmed. 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 \$2,926.76.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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