

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND L STILES

Claimant

APPEAL NO. 10A-UI-09870-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC

Employer

OC: 06/06/10

Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 30, 2010, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on August 30, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Lynn Corbeil participated in the hearing on behalf of the employer with witnesses, Tammy Harrah, Rhonda Wilcox, and Shanda Hiatt. Exhibits One through Eight were admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked as a direct support associate for the worker from May 19, 1995, to May 12, 2010. Direct support associates provide support services to clients with a range of developmental disabilities from highly functioning clients who perform most of their daily living tasks themselves to low functioning clients who require major assistance for their daily living tasks. The claimant was informed and understood that under the employer's policies, supervisors were allowed to change an employee's work schedule, shift, or worksite based on the employer's needs.

The claimant worked in an intermediate care facility (ICF) providing support services to low functioning clients for about ten years. Afterwards, the claimant requested and was granted a transfer to work with higher functioning clients in a home-and-community-based services (HCBS) facility.

On May 12, 2010, supervisors informed the claimant that he was being transferred back to an ICF unit because of two allegations of mistreatment of clients. One involved an inappropriate comment the claimant was warned about in January 2010. He admitted to making the comment. The other involved a reported comment made in May 2010 that he would have

turned his head if he had observed two clients throwing cans at each other. This was an untrue report as the claimant was not working when the can incident happened and did not make the comment.

The claimant informed the supervisor that he would not accept the transfer to the intermediate care facility because he did not think it was fair since it was based on a false accusation. He asked about working at another HCBS but the employer would not allow it. He did not report back to work.

The claimant voluntarily quit employment because he believed it was unfair to transfer him based on a false report and he did not think he could perform the more physically demanding work in the ICF unit. The claimant has a prosthetic arm and legs, which he has had throughout the time he worked for the employer. He never provided any medical statement excusing him from working in the ICF and did not state that the reason he would not except the transfer was due to medical issues. The claimant's rate of pay would have remained the same and he would have been working comparable hours as he had been working before.

The claimant filed for and received \$1,296.00 in unemployment insurance benefits from June 6 to August 7, 2010.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code section 96.5-1.

871 IAC 24.26(1) provides:

The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The evidence fails to show a willful breach of the contract of hire involving substantial changes in working hours, shifts, remuneration, location of employment or drastic modification in type of work, etc. The claimant was informed when he was hired that supervisors could change an employee's work schedule, shift, or worksite based on the employer's needs. He had worked in the ICF for years. If he believed that he was unable to perform the job due to physical restrictions, he should have submitted the restrictions to the employer. Instead, he simply stopped reporting to work. Furthermore, I do not find good cause on the basis that the transfer was unfair since the employer had discretion regarding work location under the policy.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial

proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated June 30, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs