

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACQUELINE A VROEGH
Claimant

APPEAL NO. 11A-UI-12868-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA JEWISH SENIOR LIFE CENTER
Employer

OC: 08/28/11
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(37) – Resignation
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated September 22, 2011, reference 01, that held the claimant voluntarily quit with good cause on August 31, 2011, and benefits are allowed. A hearing was held on October 24, 2011. The claimant and her wife/witness, Jesse Vroegh, participated. Dee Dolezal and Jennifer Youngquist, executive assistant, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUES:

Whether the claimant voluntary quit with good cause attributable to the employer.

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant started work as a full-time LPN beginning October 26, 2009 and last worked for the employer on July 24, 2011. The claimant and Jesse Vroegh married in August 2010. Claimant suffered a work-related back injury on April 5, 2011 and was off work into July.

The claimant was the subject of some sexual comments from a female co-worker that culminated in an incident at work on July 20. The female co-worker stated she wished she was Jesse, how beautiful and how hot claimant was, and she followed her up to the time claimant left work. Claimant reported the incident to the employer who conducted an investigation.

The employer met with claimant and her wife on July 26. The employer advised claimant that the female co-worker had been disciplined for her conduct. The claimant provided medical information she would be off work due to her back injury. The claimant was off work until her medical release on August 31. The employer expected her back to work on September 1.

The claimant left a note on the evening of August 31 that she was quitting immediately due to sexual harassment. The employer accepted claimant's resignation and made no further attempt to contact her. Claimant had received some reports from co-workers while off work that the female co-worker had been pleading her case at work about what had happened. There was no further contact between claimant and the co-worker after the July 26 meeting.

Claimant has received unemployment benefits on her current unemployment claim.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes that the claimant voluntarily quit without good cause attributable to her employer when she resigned on August 31, 2011.

The claimant's employment separation after July 24 was due to a job-related back injury based on medical documentation provided during the 26th meeting. There is no issue that claimant was subjected to sexual harassment by a female co-worker that culminated in an incident on July 20. The employer investigated the matter and disciplined the co-worker for her conduct. The employer informed claimant it had disciplined the co-worker during the July 26 meeting, and there was no further contact involving claimant and the co-worker after that date until she resigned on August 31.

While claimant received some work reports from co-workers during her employment absence that the female co-worker had been pleading her case, this action does not constitute sexual harassment. When claimant resigned on August 31, it was for a past act that the employer had appropriately dealt with by discipline. The claimant resigned in face of a doctor's release that returned her to work, which is not a good cause for leaving.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.
 - a. 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.
 - b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in

the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has received benefits on her current claim, the overpayment issue is remanded to Claims for a decision.

DECISION:

The representative's decision dated September 22, 2011, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to the employer by resignation on August 31, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw