

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN M YOUNG**

Claimant

**APPEAL NO. 15A-UI-05173-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**

Employer

**OC: 04/05/15**

**Claimant: Respondent (2)**

Iowa Code Section 96.5(1) - Voluntary Quit

Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 20, 2015, reference 01, decision that allowed benefits to the claimant provided the claimant was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had voluntarily quit on March 24, 2015 for good cause attributable to the employer based on a change in the contract of hire. After due notice was issued, a hearing was held on June 9, 2015. Claimant Dawn Young participated. Alyce Smolsky of Equifax represented the employer and presented testimony through Susan Bishop, Wilma Frey, Kathy Drake and Kathy Ewoldt. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit One and Department Exhibit D-1 into evidence.

**ISSUES:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant has been overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Dawn Young, R.N., was employed by Care Initiatives as the full-time Material Data Set (MDS) Coordinator at Odebolt Nursing & Rehab from 2012 until March 24, 2015, when she voluntarily quit the employment. Ms. Young's immediate supervisor was Kathy Ewoldt, Director of Nursing. Ms. Young's MDS Coordinator duties involved completing patient care plans and entering that

data, as well as necessary billing data, into the employer's computer system. The information had to be entered in a timely manner to comply with state and/or federal regulations.

In October 2014, Ms. Young assumed additional duties as a nurse manager/charge nurse at the request of the employer and in response to the employer being short-staffed on registered nurses. The employer had not compelled Ms. Young to assume the additional duties, but Ms. Young felt obligated to do so while the employer was short registered nurses. Certain patient nursing cares, such as administering IVs, had to be performed by a registered nurse. The nursing duties involved working 12-hour shifts, from 6:00 p.m. to 6:00 a.m. or from 6:00 a.m. to 6:00 p.m., whereas Ms. Young worked regular day shift hours when she performed the MDS Coordinator duties.

After Ms. Young began performing both sets of duties, she sometimes worked in excess of 40 hours per week and it became more difficult for Ms. Young to keep up with her MDS Coordinator responsibilities. The employer advised Ms. Young that the employer intended to hire additional nurses. The employer advised Ms. Young that the employer intended to utilize a temp nursing agency to supplement the need for the nurses at the facility, but the employer did not follow through on that. Wilma Frey, Administrator, made a couple offers to help Ms. Young with getting caught up on the MDS Coordinator duties, but it is unclear what Ms. Frey could have done to help other than hire additional nurses so that Ms. Young could focus on her MDS Coordinator duties.

On February 23, 2015, the employer met with Ms. Young for the purpose of placing Ms. Young on a performance improvement plan. Ms. Ewoldt arranged the meeting. The meeting occurred as Ms. Young was coming off a 12-hour overnight nursing shift. Kathy Drake, Nurse Consultant, presented the performance improvement plan to Ms. Young at the time of the meeting. The employer had audited a number of patient charts and found incomplete plans and MDS information. At the time of the meeting, the employer advised that it would meet with Ms. Young over the course of the next three months during which time the employer expected all care plans to be updated and complete. Though the employer characterizes the performance improvement plan as non-disciplinary in nature, Ms. Young was not unreasonable in concluding that the meeting and the written performance improvement plan constituted a reprimand. During the meeting, Ms. Young and the employer discussed the amount of office time that Ms. Young would need each week to fulfill her MDS Coordinator duties and concluded she would need three eight-hour shifts in the office.

Within 20 minutes of the conclusion of the meeting, Ms. Young submitted her written resignation to the employer. Ms. Young indicated that March 24, 2015 would be her last day. Ms. Young cited job dissatisfaction and working conditions as the basis for her resignation. Ms. Young wrote:

I believe I have gone above and beyond to be part [of] the facility, but no one has come to help me in the office when I needed help to complete my position as MDS Coordinator. God, family, then work is my philosophy and I believe that my family and God have been neglected [with] my hours and stress this job has placed on me over the last 4 months.

Ms. Young submitted her resignation in response to the performance improvement plan and had not accepted other employment at the time she submitted her resignation. On March 15, 2015, Ms. Young accepted employment with a nursing temp agency. Ms. Young continued to work at

Odebolt Nursing & Rehab until March 24, 2015 and then voluntarily separated from the employment. Ms. Young started her new employment with the temp agency on April 9, 2015.

Ms. Young's work hours in the weeks leading up to the February 23 meeting were as follows. On February 5 and 7, Ms. Young had taken time off for personal business. During the week of February 8-14, Ms. Young worked one 12-hour nursing shift and worked three days in the office, for a total of about 38 hours worked that week. During the week of February 15-21, Ms. Young worked three nursing shifts and worked two days in the office, for a total of about 52 hours worked that week. During the week of February 22-28, Ms. Young worked two nursing shifts and three days in the office, for a total of about 48 hours worked that week.

Ms. Young established a claim for unemployment insurance benefits that was effective April 5, 2015. Workforce Development calculated her weekly benefit amount to be \$471.00. Ms. Young has received \$5,181.00 in benefits for the period of April 12, 2015 through June 27, 2015.

Susan Bishop of Equifax represented the employer at the fact-finding interview. At the time of the fact-finding interview, Ms. Bishop advised the claims deputy that Ms. Young had quit on March 24, 2015 after giving a 30-day notice on February 23, 2015, that Ms. Young's job was not in jeopardy, that continued work was available, and that the quit was in response to a performance improvement plan. Ms. Bishop also provided a copy of Ms. Young's resignation memo and a copy of the performance improvement plan. Ms. Bishop did not have anyone from Care Initiatives participate in the fact-finding interview. Though given an opportunity to secure a rebuttal statement from the employer, Ms. Bishop reported back that the employer was not available to provide rebuttal information.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. 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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record indicates a change in the conditions of the employment that went into effect in October 2014, four months prior to Ms. Young's resignation,. The weight of the evidence indicates that the change in duties to add the nursing duties occurred by agreement of the parties, not because the employer compelled Ms. Young to assume the nursing duties. The addition of the nursing duties resulted in an increase in the number of hours Ms. Young worked each week, but there too Ms. Young could choose to work or not work beyond 40 hours per week. The addition of the nursing duties did make it more of a challenge to stay on top of the MDS Coordinator duties. Because Ms. Young acquiesced in the changed duties when the change occurred, and because her decision to remain in the employment another four months before resigning indicated acquiescence in the changed duties, the evidence fails to establish good cause attributable to the employer for resigning from the employment based on changes to the contract of hire.

The evidence also fails to establish intolerable or detrimental working conditions. The evidence does indicate that Ms. Young worked longer hours when performing the nursing duties, that is not uncommon for nurses and would not constitute intolerable or detrimental working conditions. Nor does the evidence indicate that employer compelled Ms. Young to work overtime hours. Ms. Young appears to have had some weeks where she had appropriate time to work on the MDS Coordinator duties. The weight of the evidence indicates that Ms. Young took on additional nursing shifts that she did not have to work and that she did not take advantage of the employer's earlier offers to make changes that would allow her to stay on top of her MDS Coordinator duties. The fact that Ms. Young was willing to remain in the employment for another month after providing her resignation also supports the conclusion that working conditions were not intolerable or detrimental.

The evidence establishes a voluntary quit that was in direct response to meeting and reprimand that occurred on February 23, 2015.

Iowa Admin. Code r. 871-24.25(28) provides:

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 section 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 section 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:

(28) The claimant left after being reprimanded.

Because Ms. Young's voluntary quit was in response to a reprimand, it was without good cause attributable to the employer. Accordingly, Ms. Young is disqualified for benefits until 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 administrative law judge notes that the Ms. Young had not accepted new employment prior to resigning and that her separation cannot be deemed a voluntary quit for the sole purpose of accepting other, better employment. See Iowa Code section 96.5(1)(a).

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$5,181.00 In benefits for the period of April 12, 2015 through June 27, 2015.

The employer complied with the fact-finding participation requirement through the combination of Ms. Bishop's oral statement and the documentation from the employer. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The April 20, 2015, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 was overpaid \$5,181.00 in benefits for the period of April 12, 2015 through June 27, 2015. The claimant must repay that amount. The employer's account will be relieved of liability for benefits, including liability for benefits already paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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