

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**LINDA L ROBBINS
146 CEDAR DR
MARION IA 52302**

**AMERICAN BAPTIST HOMES OF
MIDWEST
11985 TECHNOLOGY DR
EDEN PRAIRIE MN 55344**

**Appeal Number: 06A-UI-00519-RT
OC: 12-11-05 R: 03
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, American Baptist Homes of Midwest, filed a timely appeal from an unemployment insurance decision dated January 4, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Linda L. Robbins. After due notice was issued, a telephone hearing was held on January 31, 2006, with the claimant participating. Mary Wise, Administrator at the employer's Cedar Rapids, Iowa, location where the claimant was employed, participated in the hearing for the employer. Sara Trout, Program Director, was available to testify for the employer but not called, because her testimony would have been repetitive and unnecessary. Employer's Exhibits One through Four were admitted into

evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One through Four, the administrative law judge finds: The claimant was employed by the employer as a part-time consumer support person from September of 1998 until she voluntarily quit on October 17, 2005. On that day, the claimant informed Mary Wise, Administrator at the employer's Cedar Rapids, Iowa, location and the employer's witness, that she was quitting. She also submitted a written statement of resignation as shown at Employer's Exhibit One. In that statement the claimant stated that she was resigning for a medical disability. When the claimant spoke to Ms. Wise about quitting Ms. Wise asked the claimant to prepare a written resignation but did not dictate the words used nor specify what words the claimant should use. The claimant testified that she thought she would have been discharged had she not quit but both the claimant and Ms. Wise testified that the claimant was not told that she would be discharged and in fact the claimant asked that she be fired and she was told that she would not be. The claimant conceded that at the time she was not mentally stable. The claimant also testified that the employer was giving away all of the claimant's hours but at the time of the claimant's quit she was only working part-time. The claimant had been working in a residence providing services to the employer's clients. At that time the claimant was working full time. The claimant was having difficulties in working with a co-worker, Shelly, who worked in the same home. The claimant was notified on August 16, 2005 that she would be moved to a different home and that the move was to take effect August 22, 2005. The claimant worked a few days at the new location and then went on a medical leave on September 8, 2005. The claimant was still working, at that time, full time in the new home and was being paid the same and encountered no changes in her benefits and no changes in her duties. When the claimant was first hired she was not hired for any particular home. However, the claimant did not like the new home.

The claimant is bipolar but this was not caused by her employment. The claimant was on a leave of absence from September 8, 2005 until she was released to return to work on September 26, 2005. During her leave the claimant requested that she be placed on a part-time substitute basis. This was acceptable to both the claimant and the employer. When the claimant was released by her physician to return to work she returned to the employer as a part-time substitute working in both homes and in apartments. This was acceptable to both the employer and the claimant. Employer's Exhibit Two indicates the claimant's request to return to work part-time acting as a substitute because of medical reasons. The claimant's request for medical leave is shown at Employer's Exhibit Four. When the claimant returned as a part-time substitute she remained upset and distraught and had difficulties with her bipolar condition and in a letter to the employer dated October 14, 2005 indicated that she was having a difficult time in deciding whether to remain at the employer, as shown at Employer's Exhibit Three. The claimant then quit on October 17, 2005 as noted above.

The claimant testified that she was having problems with Shelly because the claimant did not believe that Shelly was doing her job. Shelly has multiple sclerosis and the claimant believed that Shelly was not doing her job. The claimant expressed concerns to the employer on several occasions. The employer investigated the claimant's concerns but determined that there was basically a personality conflict between the claimant and Shelly. Ms. Wise met with both the claimant and Shelly on August 12, 2006 and attempted to mediate between the two but it was clear that she could not solve the problem since there were accusations and acrimony from

both. Shortly thereafter the claimant was moved to the new home to be away from Shelly. The claimant testified that Shelly was trying to "sabotage" her by unplugging the alarm door and taking papers home, but the claimant had to concede that she did not know and could not state for certain that Shelly was the one who did these things. The claimant also testified that Shelly yelled at the employer's clients but the clients denied this. The claimant then testified that she felt that Shelly was getting preferential treatment and the claimant was not. The claimant's physician did not state that the claimant had to quit her job. In December of 2005, the claimant returned to the employer and asked to go back to work but the employer decided not to rehire the claimant. The claimant now wants her job back. Pursuant to her claim for unemployment insurance benefits filed effective December 11, 2006, the claimant has received unemployment insurance benefits in the amount of \$2,268.00 as follows: \$324.00 per week for seven weeks from benefit week ending December 17, 2005 to benefit week ending January 28, 2006.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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.

871 IAC 24.25(6), (20), (22) 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:

- (6) The claimant left as a result of an inability to work with other employees.
- (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.
- (22) The claimant left because of a personality conflict with the supervisor.

871 IAC 24.26(6)a, b 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:

(6) Separation because of illness, injury or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The parties agree that the claimant left her employment voluntarily on October 17, 2005. At first the claimant testified that she would have been discharged but the evidence is clear that the employer never told the claimant that she would be discharged and in fact the claimant even asked to be fired and the employer refused. Even the claimant eventually conceded to this. The claimant prepared a written resignation which appears at Employer's Exhibit One, and Employer's Exhibit Three shows an intention to quit. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on October 17, 2005. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer.

The claimant first stated that she left her employment because she was not mentally stable or not able to work because of her bipolar condition. The claimant was on a leave of absence, from September 8, 2005 to September 26, 2005 because of her bipolar mental condition. The claimant requested the medical leave as shown at Employer's Exhibit Four and the employer

complied. However, the claimant was released to return to work September 26, 2006 and did so, albeit as a part-time substitute. The claimant concedes that her physician did not say that she had to quit her position. The claimant has not presented competent evidence showing adequate health reasons to justify her quit or that she quit upon the advice of a licensed and practicing physician. On the contrary, the claimant testified that her physician did not say she had to quit. The administrative law judge further concludes that the claimant has not demonstrated by a preponderance of the evidence that her medical condition, her bipolar condition, was attributable to her employment. The claimant testified that her bipolar condition was not caused by her employer and that she had had it for some time. The claimant testified that she believed her employment had caused her bipolar condition "to flare up." However, there is not a preponderance of the evidence in this regard. The only problem the claimant seemed to have was with a co-worker which is discussed below. There is evidence that the claimant requested an accommodation, namely, substitute part-time work and the employer accommodated the claimant's request. The claimant made such a request in a statement dated September 23, 2005 as shown at Employer's Exhibit Two. There is no evidence of any other accommodation requested by the claimant that was not granted by the employer. Accordingly, the administrative law judge concludes that the claimant has not demonstrated by a preponderance of the evidence that her quit was with good cause attributable to the employer either for an employment related illness or a nonemployment related illness.

The claimant was on a medical leave until September 26, 2005 when she returned to work as a part-time substitute. This change, as noted above, was requested by the claimant as shown at Employer's Exhibit Four. The employer granted the claimant's request. This part-time substitute position would be both for homes and for apartments and the claimant was aware of this and this was acceptable to her. Initially the claimant testified that she did not want to be working in apartments but she conceded that she was told by the employer that such a substitute part-time position would be for both homes and apartments and the claimant accepted it. The administrative law judge concludes that this change was not a willful breach of the claimant's contract of hire. See 871 IAC 24.26 (1). There was also evidence that in August the claimant was moved from one home to another. The employer did this because the claimant could not get along with a co-worker, Shelly, who was working in the home where the claimant was working. However, the evidence establishes that this change was only to a different home. The claimant would have remained full time at the new home and would have been paid the same and would have had no changes in her benefits. Further, there was going to be no change in her duties. The evidence also establishes that the claimant was not hired for any particular home. Accordingly, the administrative law judge concludes that this change was also not a willful breach of the claimant's contract of hire.

The bottom line here is that the claimant quit because she was unable to work with a co-worker and this is not good cause attributable to the employer. The claimant testified that she had problems with a co-worker, Shelly. The claimant testified that Shelly would not do her job and that she yelled at clients and that she was the subject of preferential treatment. Shelly has multiple sclerosis. The employer's witness, Mary Wise, Administrator of the employer's location in Cedar Rapids, Iowa, where the claimant was employed, credibly testified that the employer talked to the clients and they denied that Shelly yelled at them. The claimant did express concerns to the employer about Shelly. Ms. Wise met with both the claimant and Shelly on August 12, 2005 and tried to mediate between the two but realized there was no solving the issues between the two. Both made accusations against the other. There was a personality conflict between the two individuals. Ms. Wise then determined to move the claimant to a different home. The claimant testified that Shelly tried to sabotage her by unplugging the alarm door and taking papers home but the claimant conceded that she really did not know if Shelly

had been responsible for these matters. The administrative law judge must conclude on the evidence here that the claimant quit simply because she could not work with Shelly and this is not good cause attributable to the employer. There was some evidence that the claimant quit for compelling personal reasons but the absence exceeded ten working days and this is not good cause attributable to the employer. Finally, it appears that the claimant even had a personality conflict with her supervisor but again this is not good cause attributable to the employer for the claimant's quit. There is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental. In fact the claimant now wants to go back to her employment with the employer. If the claimant's employment with the employer was so bad as to establish working conditions that were unsafe, unlawful, intolerable or detrimental, she would not now be seeking her employment back. Further, this also confirms the administrative law judge's conclusions above that the claimant did not quit for any reason attributable to the employer due to an employment related illness or nonemployment related illness. The administrative law judge finally notes that the claimant's testimony to the contrary, set out in the Reasoning and Conclusions of Law, is not credible. The claimant initially testified that she was forced to quit but there is no evidence of that at all. The claimant testified that she requested the part-time substitute work and this is clear from Employer's Exhibit Two and the claimant even conceded she knew what the part-time substitute assignment would be but now testifies it was not acceptable. The claimant also testified as to things that the co-worker was doing to "sabotage" her but conceded that she really had no specific evidence of this. The claimant's testimony is too inconsistent, too vague, and too equivocal, to be credible, at least to the extent that it is inconsistent with the testimony of Ms. Wise.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant, until, or unless, she requalifies for such benefits.

The administrative law judge notes that at the time of the claimant's voluntary quit she was working only part-time. However, the administrative law judge notes that Workforce Development records show that the claimant had no other earnings from any other employer in her base period. Therefore, the claimant would not be otherwise monetarily eligible to receive unemployment insurance benefits based on wages paid by other base period employers. See 871 IAC 24.27.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,268.00 since separating from the employer herein on or about October 17, 2005 and filing for such benefits effective December 11, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 4, 2006, reference 01, is reversed. The claimant, Linda L. Robbins, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. She has been overpaid unemployment insurance benefits in the amount of \$2,268.00.

kkf/kjw