

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUTUMN M DABNEY
Claimant

APPEAL NO. 11A-UI-01893-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASSISTED LIVING CONCEPTS INC
Employer

OC: 01-09-11
Claimant: Respondent (2-R)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 7, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 16, 2011. The claimant did participate. The employer did participate through Kathy Voss, resident director.

ISSUES:

Was the claimant discharged due to job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a personal service attendant, full-time, beginning May 10, 2010, through December 10, 2010. On December 5 the claimant called Kathy Voss to tell her she could not come to work due to personal problems. The claimant was told that if she could not come to work, she needed to find a replacement. The claimant had two other incidents of absenteeism. The claimant was told by Ms. Voss that if she did not come to work on December 5, she would be disciplined. Ms. Voss never told the claimant that she was discharged or that she would be discharged. The claimant did not show up for work on December 5, nor did she find a replacement. The claimant was scheduled to work again on December 8, 9, and 10. The claimant talked to Ms. Voss on December 7 and during that conversation she never asked Ms. Voss if she was discharged, nor did Ms. Voss ever tell the claimant that she was discharged. The claimant alleges that another former employee, Courtney, told her she had been replaced. Courtney had no authority to tell the claimant she was discharged. The claimant never followed up with Ms. Voss or any other manager to learn if she had been discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

871 IAC 24.25(4) 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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment but was not told so by the employer and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. Since the claimant did not follow up with management personnel or the owner, and her assumption of having been fired was erroneous, the claimant's failure to continue reporting to work was an abandonment of her job. Additionally since the claimant failed to report for work or notify the employer of her absences for three consecutive workdays in violation of the employer's policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are denied.

Because the claimant voluntarily left the employment without good cause attributable to the employer, benefits were paid to which the claimant was not entitled. The unemployment insurance law provides that benefits must 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

DECISION:

The February 7, 2011 (reference 01) decision is reversed. The claimant voluntarily left 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.

REMAND:

The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw