

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

AFTON E KIRK
Claimant

APPEAL NO: 19A-UI-05253-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREER SYSTEMS DEVELOPMENT CORP
Employer

OC: 05/19/19
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 21, 2019, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 25, 2019. The claimant participated in the hearing. Lindsey Cale, Human Resources Manager and Kenneth Kjer, Employer Representative, participated in the hearing on behalf of the employer. Claimant's Exhibits A and B and Employer's Exhibit One were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time nursing assistant/home health aide instructor for Career Systems Development Corporation from August 10, 2015 to March 27, 2018. She voluntarily quit her job due to a conflict with a co-worker.

On March 7, 2019, the claimant took students to test and one student took the test who was not supposed to be allowed to do so. Supervisor Devon Glover called the claimant that night to ask how the student was able to test and an investigation into the matter was started.

On March 9, 2019, a meeting was held and the claimant was allowed to present her side of the student testing situation. On March 13, 2019, a meeting was held with Mr. Glover, the career development counselor, part-time CNA Clinical Instructor Angela Sales and CNA Instructor Heather Alamari. The claimant had issues with Ms. Sales for several months and felt both she and Ms. Alamari attacked her during the meeting until Mr. Glover told Ms. Sales to "tone it down." She believed they also repeated statements the claimant made out of context. The employer asked the claimant to write a clarifying statement about those comments and the claimant did so in a statement dated March 15, 2019 (Claimant's Exhibit A). Another meeting

was held March 13, 2019, which was attended by Mr. Glover, the career development counselor, Ms. Sales, Ms. Alamari, Center Director Mark Douglas, CEO Bobby Brown, and Robin Carmichael from the corporate office. During the meeting, the employer heard from the claimant, Ms. Sales and Ms. Alamari. Ms. Sales called the claimant a liar and said she could never work with her again. The employer had Ms. Sales and Ms. Alamari leave the room and Mr. Douglas and Mr. Brown met with the claimant. They brought up a situation in which the claimant caught two students in a closet and did not report it but the claimant explained when she saw the students in the closet they were simply filling a bucket and their actions did not raise any red flags. The claimant was crying so the employer sent her home.

On March 22, 2019, Human Resources Manager Lindsey Cale met with the claimant and asked her to give a statement about the student who tested when she was not supposed to do so but the claimant did not feel comfortable giving that statement so that is what she indicated.

On March 27, 2019, the claimant decided to resign because she was having anxiety and started a new medication for that condition. Her doctor did not tell her to quit her job. The claimant submitted a resignation letter to the employer, effective immediately, and completed an exit interview (Employer's Exhibit One and Claimant's Exhibit B). The claimant was not reprimanded and her job was not in jeopardy when she decided to leave.

The claimant has claimed and received unemployment insurance benefits in the amount of \$1,944.00 for the nine weeks ending July 20, 2019.

The employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973). The claimant had a conflict with a part-time co-worker and also made an error in allowing a certain student to test. The employer was still investigating those situations but had no plans to reprimand the claimant or terminate her employment when she voluntarily quit her job without notice. The employer did not behave

unreasonably in investigating the claimant's actions and inquiring about her statements to her co-workers.

The claimant believed that the work environment caused her anxiety which she cited as a reason for her leaving. She did not report that condition to the employer before leaving her job. Benefits were denied to a claimant who resigned because of alleged health conditions caused by the employment since the claimant had never reported the health condition to the employer so that it could remedy the situation. *Saluki v. EAB*, 503 N.W.2d 402 (Iowa 1993). Additionally, the claimant was not told by her doctor she needed to quit her job. A voluntary quit based on illness is clearly disqualifying except upon the advice of a licensed and practicing physician. *Taylor v. IDJS*, 362 N.W.2d 534 (Iowa 1985).

Under these circumstances, the administrative law judge must conclude the claimant has not established that her leaving was for unlawful, intolerable, or detrimental working conditions as those terms are defined by Iowa law. Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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 section 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 benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

The employer did not participate in the fact-finding interview. Consequently, the claimant's overpayment of benefits is waived as to the claimant and her overpayment, in the amount of \$1,944.00 for the nine weeks ending July 20, 2019, shall be charged to the employer's account.

DECISION:

The June 21, 2019, reference 02, decision is reversed. The claimant voluntarily left her 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. The claimant has received benefits but was not eligible for those benefits. The employer did not personally participate in the fact-finding interview within the meaning of the law. Therefore, the claimant's overpayment, in the amount of \$1,944.00 for the nine weeks ending July 20, 2019, shall be charged to the employer's account.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn