

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLE L JOHNSON
Claimant

APPEAL NO. 07A-UI-04776-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**OC: 04/01/07 R: 01
Claimant: Respondent (2)**

Section 96.5-1 - Voluntary Quit
Section 96.4-3 – Able and Available
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's May 3, 2007 decision (reference 01) that concluded Nichole Johnson (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 24, 2007. The claimant participated personally. The employer was represented by Lynn Corbeil, Attorney at Law, and participated by Loretta Frahm, Office Manager; Bonnie Roark, Activity Social Service, and Troy Anderson, Administrator. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant is eligible to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 17, 2003, as an on-call activities assistant. On January 1, 2004, the claimant requested that she also work as an on-call certified nursing assistant (CNA). On May 1, 2004, the claimant requested to become a part-time CNA and on-call activities assistant. On November 22, 2004, the claimant requested to become a full-time CNA and keep her on-call activities assistant position. On April 11, 2006, the claimant gave notice that she was quitting her CNA position to take employment with a grocery store. Continued work was available had the claimant not resigned. She maintained her on-call activities assistant position. In January 2007, the claimant became a full-time student. Her grocery store position ended. The claimant continues to work for the employer on-call as an activities assistant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant left her full-time position with the employer to work for another employer. When an employee quits work to take other employment, she is not disqualified from receiving unemployment insurance benefits. The claimant quit her full-time work to take other employment. She voluntarily quit without good cause attributable to the employer. Benefits are allowed because the claimant left to take other employment. The employer will not be charged.

For the reasons that follow the administrative law judge concludes the claimant is not able and available for work.

871 IAC 24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

When an employee requests and is granted time off or is a full-time student, she is considered to be unavailable for work. The claimant requested a reduction of her hours and the employer granted her request. In addition, the claimant became a full-time student. The change in hours was initiated by the claimant. She is considered to be unavailable for work. The claimant is disqualified from receiving unemployment insurance benefits due to her unavailability for work.

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 claimant has received benefits since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's May 3, 2007 decision (reference 01) is reversed. The claimant voluntarily quit without good cause attributable to the employer. Benefits are allowed because the claimant left to take other employment. The employer will not be charged. However the claimant is disqualified from receiving unemployment insurance benefits because she is not available for work with the employer. The claimant is overpaid benefits in the amount of \$1,551.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs