

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NICOLE M SMITH**

Claimant

**APPEAL 18A-UI-01902-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**

Employer

**OC: 01/14/18**

**Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 2, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 7, 2018. The claimant participated and testified. Witness Chelsey Johnson also testified on behalf of the claimant. The employer participated through Hearing Representative Jackie Bourdreaux and witnesses Theresa Sanchez and Kelly Flanagan. Employer's Exhibit 1 was received into evidence.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a direct support professional from March 12, 2015, until this employment ended on January 16, 2018, when she resigned.

In her role as a direct support professional claimant was responsible for working with adults with developmental disabilities and mental health issues in their home setting. Claimant had worked with the same group of three men for approximately three years and generally had a good working relationship with all three clients. On November 12, 2017, there was an incident between claimant and one of the clients involving a box cutter. The client was upset that Program Supervisor Theresa Sanchez and several other staff members had come into his home and cleaned. What Sanchez and the other staff members did not realize was that they had left a box cutter behind when they were done with the cleaning. The client informed claimant he had the box cutter and then made some statements she perceived as threats towards the staff members who had cleaned his home. Claimant immediately reported the situation to Sanchez, as she was a supervisor and was one of the individuals threatened. Sanchez, who was present

just outside the home, asked claimant if she could go in and try to get the box cutter away from the client. Claimant agreed, as she had a good rapport with the client and she was not one of the individuals he was upset with. According to claimant when she attempted to take the box cutter away, the client tried to stab her with it. As the client was trying to eject the blade it got stuck and claimant was able to disarm him and retreat to the garage, where she called Sanchez for help. Sanchez, in turn, called claimant's immediate supervisor, Program Supervisor Chelsey Johnson, for assistance, despite the fact that Sanchez was right outside the home and Johnson was across town. Sanchez admitted she did not feel safe going in the home, but did not feel the need to call law enforcement, as she did not believe the client was actually trying to harm claimant. Rather, she characterized the incident as the client trying to eject the box cutter blade in a manner that was just "playing" and "teasing" claimant. Claimant and Johnson were eventually able to calm the client down and claimant agreed to take him on a car ride to buy some cigarettes.

Claimant testified, following this incident, she told Sanchez she was not comfortable working alone in the home, as the client indicated an intent to "get back at" claimant the next time backup was not available. When claimant showed up for her next shift, another employee was there as well, but informed claimant she had only been approved by Sanchez to work a few hours, leaving claimant alone the remainder of the night. According to claimant, over the next two months, she continued to have situations with the client where the client became escalated to the point claimant did not feel the situation was safe. Claimant testified each time such an incident occurred she reported it to her immediate supervisor, Johnson, and was told by Johnson that she and Sanchez were working on a solution. Johnson testified she reported the incidents to Sanchez and Sanchez indicated she was working on it with Regional Director Kelly Flanagan. Sanchez denied being told of any incidents occurring after the box cutter incident, though she did admit Johnson told her Smith and another coworker did not feel management was moving quickly enough to get the client help. Flanagan testified none of this information, including the box cutter incident, was ever reported to her.

On January 1, 2018, claimant submitted her written resignation to Johnson. (Exhibit 1). Claimant explained to Johnson that she did not feel the employer was taking the situation with client continuing to escalate and make threats seriously, nor did she feel they were moving quickly enough to get him the assistance he needed for his mental health issues, which may have resolved the situation. Claimant had previously talked to Johnson about the possibility of resigning two weeks prior, but agreed to stay to see if things improved. Sanchez was not immediately notified of claimant's intent to resign. Sanchez first learned of the possibility on January 12, 2018, when Johnson left employment and claimant informed her she wanted to go to on-call status, as she was going to take a higher paying job at Wal-Mart. Sanchez did not actually receive a copy of the prior written resignation until January 16, 2018, claimant's last day. At that time claimant also indicated she was no longer interested in going to on-call status and would be fully separating from employment. Sanchez noted other options, besides resigning, would have been available to claimant, such as moving to a different house, but claimant was not interested in those options. Sanchez also testified, however, that the last time claimant was offered such an option was August 2017 and that, while she may have been able to maintain the same number of hours each week, the hours might have been on different shifts or days of the week.

Prior to claimant's last day, on January 12, 2018, the client in question was civilly committed on a 72 hours basis for a psychological evaluation. Claimant testified this did not change her mind about leaving because the client had previously indicated he would "put a bullet" in anyone who tried to lock him up and she no longer had faith in the employer's ability or willingness to take the client's threats seriously and act appropriately. Claimant admitted, following her separation, she did attend a game night at the client's home, per the request of all three individuals living in the home, but noted she felt safe doing so, as there were other support professionals present.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 14, 2018. The claimant filed for and received a total of \$1,196.00 in unemployment insurance benefits for the weeks between January 14 and February 24, 2018. Both the employer and the claimant participated in a fact finding interview regarding the separation on February 1, 2018. The fact finder determined claimant qualified for benefits.

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

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be credible. The claimant and Johnson both testified that claimant's concerns for her own safety and well-being were regularly brought to Johnson's attention and this was the reason cited to Johnson at the time of resignation for claimant leaving. Additionally, one of claimant's primary claims was the she did not feel Sanchez was taking the situation with the client seriously. This concern was bolstered by Sanchez' own testimony that she felt the client was "playing" and "teasing" claimant with the box cutter, leading her to believe law enforcement intervention was not necessary, despite the fact that she herself did not feel safe going into the home and called Johnson from across town to back claimant up.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.26 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:

(2) The claimant left due to unsafe working conditions.

...

(4) The claimant left due to intolerable or detrimental working conditions.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

While it may be true that claimant is trained and experienced in working with individuals with mental health conditions, and the subject client in particular, she clearly indicated to Johnson and Sanchez that she felt the situation was no longer safe and the client needed assistance beyond what she could provide. Despite her requests for additional assistance, the employer continued to put claimant into a situation in which the client regularly escalated, sometimes making threats of physical harm, and she felt unsafe. The failure of the employer to address claimant's concerns and ensure a safe work environment created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed. Accordingly, the issues of overpayment and participation are moot.

**DECISION:**

The February 2, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs