

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDITH A BIRELY
Claimant

APPEAL NO. 10A-UI-07940-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 04/25/10
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Care Initiatives filed a timely appeal from an unemployment insurance decision dated May 25, 2010, reference 01, that allowed benefits to Judith A. Birely. After due notices was issued, a telephone hearing was held July 21, 2010 with Ms. Birely participating. Lynn Corbeit, Attorney at Law, appeared on behalf of the employer. Julie Lovell and Tim Bouseman testified. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Judith A. Birely was employed by Care Initiatives from 1996 or 1997 until she resigned April 28, 2010. She last worked full time as a certified nursing assistant and certified med assistant. At the beginning of Ms. Birely's shift, Director of Nursing Julie Lovell called Ms. Birely to her office after receiving a complaint from coworker Lorie Johnson that Ms. Birely was making comments behind Ms. Johnson's back. Ms. Lovell spoke with both of the individuals. The problem appeared to have begun when Ms. Johnson invited some friends, but not Ms. Birely, to a local bar off hours. The meeting ended with no discipline being imposed but with Ms. Lovell reminding both not to bring their personal lives to work again. Later that evening Ms. Birely went to the office of Administrator Tim Bouseman and stated that she was resigning immediately. She left the facility at approximately 5:30 p.m.

Ms. Birely also felt that other coworkers were hostile towards her. Although she had spoken to a previous director of nursing about this, she had not made any complaints about coworkers or any other matters to Ms. Lovell, who had become director of nursing in March of 2010. Ms. Birely also felt that she was overworked and that there was stress due to state inspections. Staffing levels were consistent with state law.

Ms. Birely has received unemployment insurance benefits since filing a claim effective April 25, 2010.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. It does not.

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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. An individual may receive unemployment insurance benefits if the individual has resigned due to intolerable or detrimental working conditions. See 871 IAC 24.26(4). On the other hand, an individual who resigns because of the inability to work with other employees or because of general dissatisfaction with the work environment leaves work without good cause attributable to the employer according to 871 IAC 24.25(6) and (21).

The evidence in this record does not establish the existence of more stress than is normal in the healthcare industry. It does not establish that the employer was aware until April 28 of any interpersonal conflicts between members of the staff. It does establish that the employer responded appropriately in speaking to Ms. Birely and her coworker. What is left is that the evidence does establish that Ms. Birely left employment because of her conflicts with her coworkers. While this may constitute good personal cause for leaving employment, it does not constitute good cause attributable to the employer. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether Ms. Birely must repay the benefits she has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated May 25, 2010, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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