

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSEMARY LEHR
Claimant

APPEAL NO: 13A-UI-14906-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AREA RESIDENTIAL CARE INC
Employer

OC: 11/18/12
Claimant: Respondent (1)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Area Residential Care, Inc. (employer) appealed an unemployment insurance decision dated December 11, 2012, reference 01, which held that Rosemary Lehr (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing began on January 23, 2013 and was completed on February 25, 2013. The claimant participated in the hearing with Attorney Donna Smith. The employer participated through Teri Pitzen, Human Resources Director. Office Manager Sylvia Kleesner participated in the January 23, 2013 hearing date but not the February 25, 2013 hearing date. Employer's Exhibits One through Five and Claimant's Exhibits A, B, and C were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her 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 employed as a full-time bookkeeper from May 30, 1978 through November 19, 2012. She resigned in lieu of termination. The claimant received a written warning on March 23, 2011 for failing to perform job duties or other assigned tasks and failure to foster positive relationships with co-workers and agency personnel. Consequently, she was placed on a disciplinary probation from March 23, 2011 through September 23, 2011. A second written warning was issued on April 10, 2012 for failure to perform job duties or other assigned tasks. This warning placed her on probation from April 10, 2012 through January 10, 2013.

No other formal warnings were issued to the claimant prior to her termination but several emails were sent to her reminding her as to issues that needed to be addressed. An email was sent on

May 8, 2012 regarding rate sheets needing to be updated. The employer sent another email on June 28, 2012 addressing mistakes on contracts from May through July 2012 and the claimant promptly responded to the employer with additional information or corrections she had made. The supervisor sent an email on July 30, 2012 addressing incorrect rates on three contracts. An email was sent on August 6, 2012 regarding errors on three client billings contracts. The employer questioned the claimant on August 20, 2012 about contract payments regarding three accounts and the claimant provided responses to each contract. An email was sent on August 28, 2012 asking why the new school contracts have not been put into ISS and reminding the claimant to keep personal telephone calls on the cell phone to a minimum. The claimant responded that there was a lot of information that needed to be correct and planned on correcting them all at once.

An email was sent on November 19, 2012 advising the claimant she submitted two billings for the month of August 2012 and needed to submit a September 2012 billing. A second email was sent to the claimant that day regarding a client's bill from October 1, 2012 through October 30, 2012 when the client moved out. The billing can only be submitted from October 1, 2012 through October 29, 2012 and the claimant needed to send a corrected claim. On this date, the employer made the decision to terminate the claimant based on the fact that she continued to disregard the employer's expectations and her repeated mistakes were a liability to the financial wellbeing of the agency. The claimant testified she did the job to the best of her ability and quit instead of being discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant quit on November 19, 2012 when she was given the choice to quit or be discharged. When an employee quits in lieu of discharge, it is an involuntary quit since the employee really had no choice in the matter. However, the rule specifically treats this type of a separation as a voluntary quit with good cause attributable to the employer. 871 IAC 24.26(21).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has satisfied that burden. Benefits are therefore allowed.

DECISION:

The unemployment insurance decision dated December 11, 2012, reference 01, is affirmed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs