

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VIRGINIA SAVAGE**  
Claimant

**APPEAL NO: 09A-UI-16940-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 10-04-09**  
**Claimant: Appellant (1R)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 30, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on December 15, 2009. The claimant participated in the hearing. Glen Williams, Dietary Services Manager; Tabitha Wilker, Administrator; and Lynn Corbeil, Employer Representative, participated in the hearing on behalf of the employer.

**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 part-time dietary aide for Care Initiatives from October 21, 2008 to August 2, 2009. The claimant moved from a full-time cook to a part-time dietary aide April 9, 2009, at her request because she was having problems with her feet. The employer did not guarantee the claimant a certain number of hours as a part-time employee and when the employer's census decreased it cut everyone's hours slightly. The claimant felt the employer was giving her hours to the dishwasher, a charge the employer denies as it was an across the board cut in hours, and the claimant never talked to the employer about her reduction in hours before she quit. She also testified she felt she was harassed on the job by co-workers who said she could not do her job and made fun of her because she was older. She had a disagreement with Terra, a cook, because Terra was on the phone talking about her tattoos and the claimant told her she should be serving food instead of talking on her cell phone. Dietary Aide Christa often left notes for the claimant about duties that needed to be performed by the claimant or discussing items that needed to be done but were not done. One of the biggest sources of complaint by the claimant was that the employees on the shift preceding hers left her notes saying not to use the juice glasses they poured but to pour her own juice glasses for residents. The claimant was upset by the notes because she stated she always poured her own juice glasses. She stated the last straws that caused her to quit when she did was that she believed

the dishwasher was receiving her hours and a cook had quit and she knew she would have to work with Terra, something she refused to do because she thought Terra was a “druggie.” She did not tell the employer why she was leaving or about any of her complaints.

The claimant has claimed and received benefits since her separation from this employer until 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 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.

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. The claimant was dissatisfied with her hours and the work environment. While the employer did decrease her hours, it was forced to reduce everyone's hours because its census was low. The claimant is convinced the employer gave her hours to the dishwasher but the employer credibly denied doing so and its denial seems reasonable given that it was an across the board cut. Additionally, the employer never guaranteed the claimant a certain number of hours. With regard to the claimant's charges of harassment, co-workers made rude comments to the claimant about getting her job done and some about her age. Although those comments were unprofessional, inappropriate and uncalled for, the claimant never talked to the employer about those issues and as a result the employer did not have an opportunity to address her concerns. Under these circumstances, the administrative law judge must conclude the claimant has not met her burden of proving unlawful, intolerable or detrimental working conditions as defined by Iowa law. Therefore, benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The October 30, 2009, reference 01, decision is affirmed. 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. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs