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

ROBIN S SNITKER
Claimant

APPEAL NO. 13A-UI-12336-VST

ADMINISTRATIVE LAW JUDGE
DECISION

ABCM CORPORATION
Employer

OC: 09/29/13
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated October 23, 2013, reference 02, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on November 26, 2013, by telephone conference call. The claimant participated personally. The employer participated by Deanna Armstrong, Human Resources Director, and Alissa Gillespie, Business Office Manager. Employer's Exhibits 1 and 2 were received into evidence.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer; and
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a nursing home located in Mt Vernon, Iowa. The claimant was hired on October 17, 2012, as a part-time bed maker. Her last day of work was September 17, 2013. She voluntarily quit her job on September 17, 2013.

The claimant wanted to work as a certified nursing assistant and the employer paid for the necessary training. The claimant thought she was going to work at Hallmark, which is the long-term care facility. When she got her schedule on August 14, 2013, she had hours at Hallmark and another facility called Cherry Ridge. The claimant questioned this with the employer and had a meeting with the employer. The claimant decided to quit but changed her mind and asked for her job back. The employer agreed to take her back but the employer had no open position for the claimant. The employer tried to work the claimant back into the schedule and she was given hours on second shift. There was no permanent job available on second shift. A job did open up on third shift and the claimant was given a position as a certified nursing assistant on September 17, 2013. The claimant agreed to take the position but then

changed her mind. She did not feel this action by the employer was fair. She decided to quit. She left the premises and only told a few co-workers that she was leaving. She never contacted management and never returned to work.

The employer participated in the fact-finding process.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The claimant is not eligible for unemployment insurance benefits. The greater weight of the credible evidence is that the claimant decided she did not want to work on third shift for personal reasons. The critical evidence in this case is that the claimant had quit previously in August 2013 and asked to be taken back by the employer. When the employer rehired the claimant there were no open positions for the claimant. The employer endeavored to work her back into the schedule and she was given some second-shift hours. The claimant erroneously came to the conclusion that she was entitled to a job on second shift. The employer was able to offer the claimant a position as a CNA, at Hallmark, which is where the claimant wanted to work, on third shift. The claimant went so far as to take the job and then changed her mind for personal reasons. She did not tell management that she was quitting. She abruptly left the premises and only informed a few co-workers that she was leaving. The administrative law judge concludes that the claimant voluntarily left without good cause attributable to the employer. There was no change in the contract of employment. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant was, therefore overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The decision of the representative dated October 23, 2013, reference 02, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The claimant has been overpaid unemployment insurance benefits and those benefits shall be repaid by the claimant.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/css