

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time certified nurse's assistant/home health aide on August 25, 2003. Although she still received full-time benefits, she voluntarily went to part-time hours as of January 2004 when she started school in the evenings. She was no longer willing to work on Wednesdays and also wanted to be done working by early afternoon so that she could get her studies done before her children arrived home. The employer accommodated her request. The claimant had nine clients as of July 15, 2005, when she went on a non-work-related medical leave. She was released to return to work without restrictions as of August 30, 2005 and initially was going to be given six clients. However, the claimant quit her employment on August 29, 2005 because she felt she was only getting part-time instead of full-time hours. The employer considered full-time hours anywhere from 32 to 40 hours per week and the claimant worked less than 32 hours from January 2004 through August 2005.

The claimant filed a claim for unemployment insurance benefits effective August 28, 2005 and has received benefits after the separation from employment in the amount of \$1,464.00.

REASONING AND CONCLUSIONS OF LAW:

The issue 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 sections 96.5-1 and 96.5-2-a.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated her intent to quit and acted to carry it out when she told the employer she was quitting and submitted a resignation notice. The claimant's resignation notice stated that she was forced to resign because the employer gave her full-time job to a new employee. The employer had hired another employee to work when the claimant was on her medical leave of absence but that had no effect on the claimant's hours when she was able to return.

The claimant reduced her own hours from full to part-time in January 2004 and her personal situation had not changed when she was scheduled to return to work on August 29, 2005. The employer has not changed the claimant's contract of hire and in fact wanted her to put in more hours, since the claimant was not currently attending meetings and the employer wanted her to begin doing so. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her and the claimant has not satisfied that burden. Iowa Code section 96.6-2. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated September 22, 2005, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she 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 claimant is overpaid benefits in the amount of \$1,464.00.

sdb/kjw