

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA L RANHEIM
Claimant

APPEAL NO. 12A-UI-13436-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 10/14/12
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 1, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 10, 2012. Claimant Donna Ranheim participated and presented additional testimony through Jon Ranheim. Marty Young of Equifax Workforce Solutions represented the employer and presented testimony through Connie Gremmer and Tammy Smit. Exhibit One was received into evidence.

ISSUE:

Whether Ms. Ranheim separated from the employment for a reason that disqualifies her for unemployment insurance benefits. The administrative law judge concludes that Ms. Ranheim voluntarily quit by tendering a resignation that was accepted by the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mosaic provides home and community based support services to intellectually disabled persons. Donna Ranheim became an employee of Mosaic on April 1, 2012, when her previous employer, Krysilis, became part of Mosaic. Ms. Ranheim had started with Krysilis in January 2012. Ms. Ranheim worked as a full-time Direct Support Associate. Ms. Ranheim's immediate supervisor was Tammy Smit, Direct Support Manager. Ms. Ranheim's duties usually involved working with two young adult male clients in their home. Ms. Ranheim was supposed to provide the young men with assistance with their daily living needs. Ms. Ranheim's duties did not include assisting with hygiene beyond prompting the young men to tend to their personal hygiene. Ms. Ranheim last performed work for the employer on September 25, 2012.

On September 26, 2012, three employees contacted Ms. Smit with concerns that Ms. Ranheim had been behaving inappropriately, and in a sexually suggestive manner, with the two disabled young men in her care. Direct Support Associate (DSA) Kristin Harms alleged that Ms. Ranheim had done "cheerleading moves" in front of the two young men and that Ms. Ranheim had given one of the men a backrub. DSA Julie Shankland alleged that Ms. Ranheim had been hugging and touching the two young men. DSA Sonja Johnson alleged

that Ms. Ranheim had performed “cheerleading moves” in front of the house where the two young men and other clients resided and that Ms. Ranheim was acting more like “a friend or giddy girlfriend” than as a staff member or role model. One or more of the employees alleged that Ms. Ranheim’s actions included doing the splits and sitting in front of the young men with her legs spread apart.

Ms. Ranheim was scheduled to work at 2:30 p.m. on September 26. At 2:15 p.m., Ms. Smit telephoned Ms. Ranheim and told her that she was not to report for work and that she was being suspended from work pending an investigation. Ms. Smit told Ms. Ranheim that she would contact her later to interview her in connection with the investigation. Ms. Smit directed Ms. Ranheim not to contact Mosaic staff while the investigation was pending and to stay off Mosaic property. When Ms. Ranheim pressed for the reason for the suspension, Ms. Smit told her she could not share that with her and terminated the call.

After Ms. Smit telephoned Ms. Ranheim, Ms. Smit left her office to perform Ms. Ranheim’s assigned duties until a replacement worker arrived. Within 30 minutes of the phone call with Ms. Smit, and despite Ms. Smit’s specific directive not to contact Mosaic staff while the investigation was pending, Ms. Ranheim telephoned coworker Julie Shankland. Ms. Shankland was out of town at the time. Ms. Shankland did not share with Ms. Ranheim that she had been one of the employees who complained about Ms. Ranheim. Ms. Shankland made reference to coming to comfort Ms. Ranheim, but did not go to Ms. Ranheim’s home. Ms. Ranheim spoke to Ms. Shankland about whether she should resign.

At 3:50 p.m., Ms. Ranheim telephoned Ms. Smit’s work phone number and left a message in which she specifically stated that she was resigning from the employment. Ms. Ranheim said that her feelings were “totally crushed” and that the joy she had for the job would never be there again. Ms. Ranheim said she was “totally embarrassed” and that she was “aware that everybody knows.” When Ms. Smit returned to her office at about 4:30 p.m., she listened to her voice mail messages, including the message Ms. Ranheim had left. Ms. Smit also had Connie Gremmer, Human Resources Specialist, and Tina Abendroth, Program Coordinator, listen to the message. Ms. Gremmer prepared a memo accepting Ms. Ranheim’s resignation. Ms. Gremmer mailed the memo to Ms. Ranheim the next day.

On September 27 or 28, Ms. Smit telephoned Ms. Ranheim to ask whether she wished to participate in an exit interview. Ms. Ranheim said she would only participate in the exit interview if she could bring a witness and if the employer agreed to tell her what had prompted the investigation and suspension. In light of Ms. Ranheim’s resignation, Ms. Smit declined to go into the matters that had prompted the investigation and suspension.

On October 2 or 3, Ms. Ranheim left Ms. Smit a voice mail message in which she said she did not really want to quit the job and asked what she could do to get it back. At some point during the first or second week in October, Ms. Ranheim sent a letter to a Mosaic administrator. The administrator told Ms. Ranheim that she did not have anything to say to her about the investigation or suspension, but that Ms. Ranheim was welcome to reapply. Ms. Ranheim reapplied, but was not rehired.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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.

Ms. Ranheim would have the administrative law judge believe that she was without control of her faculties and her actions when she disregarded the employer's clear directive not to contact coworkers while the employer conducted its investigation. Ms. Ranheim would have the administrative law judge believe that she was without control of her faculties and her actions when she telephoned the employer on September 26, 2012 and specifically tendered her resignation. Ms. Ranheim would have the administrative law judge believe that she somehow lost the memory of having resigned until the employer contacted her a few days later about an exit interview. The testimony Ms. Ranheim provided about these matters is not credible. The evidence indicates instead that Ms. Ranheim made an intentional decision to act contrary to the directive Ms. Smit issued to her by contacting Ms. Shankland within 30 minutes of being told not to. The weight of the evidence does not support Ms. Ranheim's assertion that Ms. Shankland somehow put her up to resigning the employment. The recorded resignation was played into the hearing record. Nothing about that voice mail message suggests it was left by a person "in shock" or hysterical. Ms. Ranheim's decision to resign may have been rash, but it was intentional. The employer promptly accepted the resignation and mailed a memo to Ms. Ranheim indicating the same.

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.

An employee will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. See Iowa Admin. Code r. 871 IAC 24.25(37).

When an employee voluntarily quits in response to a reprimand, the quit is presumed to be without good cause attributable to the employer. See Iowa Admin. Code r. 871 IAC 24.25(28).

The weight of the evidence in the record indicates that Ms. Ranheim voluntarily quit on September 26, 2012, when she tendered her resignation and the employer accepted her resignation. The weight of the evidence indicates that the quit was tendered in anticipation of a reprimand for inappropriate interaction with disabled clients. The quit was without good cause attributable to the employer. Ms. Ranheim is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

The administrative law judge notes that Ms. Ranheim would be disqualified for benefits even if the evidence had established that she had been discharged from the employment. This is because the evidence indicates that Ms. Ranheim intentionally interfered with the employer's investigation by intentionally disregarding the employer's specific directive that she not contact coworkers while the investigation was pending. Ms. Ranheim's conduct in this regard was in willful and wanton disregard of the employer's interests in conducting an investigation free of undue influence from Ms. Ranheim so that the employer could determine whether Ms. Ranheim

had indeed behaved in an inappropriate, sexually suggestive manner with two of the employer's disabled clients. The conduct constituted misconduct in connection with the employment that would disqualify Ms. Ranheim for unemployment insurance benefits. See Iowa Code section 96.5(2)(a)(regarding disqualification based on misconduct) and Iowa Admin. Code r. 871 IAC 24.32(1)(a)(defining disqualifying misconduct).

Iowa Code section 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

DECISION:

The Agency representative's November 1, 2012, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs