

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER L GALVAN**  
Claimant

**APPEAL NO. 09A-UI-15664-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**Original Claim: 09/13/09  
Claimant: Respondent (2-R)**

Iowa Code section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 14, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 19, 2009, without Ms. Galvan participating. Ms. Galvan provided good cause to reopen the record and further hearing took place on December 9, 2009, with Ms. Galvan participating. Tom Kuiper of Johnson & Associates/Talx represented the employer and presented testimony through Amy Johnson, Linda Nangle, Miriam Ramsden, and Shelley Vozenilek. Exhibits A, One, and Two were received into evidence.

**ISSUE:**

Whether Ms. Galvan separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jennifer Galvan was employed by Care Initiatives as a full-time Certified Nursing Assistant at Heritage Nursing and Rehab beginning in 2006 and last performed work for the employer on September 13, 2009. Ms. Galvan's immediate supervisors would have been the charge nurses on duty during her shifts.

On September 13, 2009, Ms. Galvan walked off the job during her shift. Ms. Galvan had arrived for work in time for the 2:00 p.m. start of her shift and found that the posted work assignment had her working in multiple station areas. Ms. Galvan made contact with Linda Nangle, L.P.N., and asked for clarification on her station assignment. Ms. Nangle told Ms. Galvan that she was assigned to work in station four and that if Ms. Galvan had a problem with the assignment she would need to speak to the charge nurse, Greg Boer. Ms. Galvan had a personality conflict with one or more C.N.A.s who worked in the station four area. Ms. Nangle did not know about the prior issues in station four at the time she told Ms. Galvan she was assigned to work in that area. Ms. Galvan told Ms. Nangle that the administrator had told her she would not have to work in station four. The administrator had in fact not promised Ms. Galvan she would never be assigned to work station four. Ms. Nangle told Ms. Galvan she would need to take the matter up with the nurses who were coming on duty. Another nurse, Shelley Vozenilek, was standing next to Ms. Nangle, while Ms. Nangle gave shift change report. While Ms. Nangle's back was turned to Ms. Galvan, Ms. Vozenilek observed

Ms. Galvan silently mouth the words “fucking bitch.” Ms. Galvan’s conduct was directed at Ms. Nangle. Ms. Galvan then left the area. Ms. Vozenilek told Ms. Nangle about the conduct. Ms. Nangle asked a nurse coming on duty to decide where to assign Ms. Galvan and Ms. Galvan was assigned to work somewhere other than station four. A short time later, Ms. Galvan was in the area and Ms. Nangle took the opportunity to scold her. Ms. Nangle told Ms. Galvan, “Don’t you ever call me a fucking bitch again.” Ms. Galvan denied having done so. Ms. Galvan announced, “I don’t have to take this.” A short while later another C.N.A. alerted the nurses that Ms. Galvan had left the workplace.

On September 14, the administrator, Amy Johnson, contacted Ms. Galvan. Ms. Johnson agreed to investigate the September 13 incident. Ms. Johnson asked Ms. Galvan whether she would be appearing for her shift on September 15. Ms. Galvan said she would appear only if the “harassment” that she alleged had been going on for two years stopped. The verbal reprimand Nurse Nangle issued to Ms. Galvan on September 13 was based solely on Ms. Galvan’s offensive utterance on the same day and had minimal connection with Ms. Galvan’s pre-existing personality conflicts with her coworkers.

On September 15, Miriam Ramsden, Director of Nursing, telephoned Ms. Galvan. Ms. Ramsden told Ms. Galvan the employer had completed its investigation and had concluded Ms. Galvan did direct the profane comment to Nurse Nangle. Ms. Ramsden told Ms. Galvan the employer deemed the employment ended based on Ms. Galvan’s unauthorized early departure on September 13.

#### **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.

The weight of the evidence establishes a voluntary quit. On September 13, Ms. Galvan’s announcement that she did “not have to take this” amounted to an announcement of a quit. Ms. Galvan’s unauthorized departure from the workplace and refusal to return unless and until the alleged harassment was resolved further evidenced an intention to sever the relationship. The employer accepted the de facto resignation on September 15 at the same the employer notified Ms. Galvan that the investigation indicated Ms. Galvan had directed a profane remark at Nurse Nangle, who was functioning in a supervisory capacity vis-à-vis Ms. Galvan at the time of the incident. The weight of the evidence indicates that Ms. Galvan’s misconduct on September 13 provoked the verbal reprimand from Nurse Nangle that same day. Ms. Galvan left in response to the reprimand, which would make the quit without good cause attributable to the employer. See 871 IAC 24.25(28). The weight of the evidence fails to establish any significant connection between Ms. Galvan’s quit on September 13 and her prior allegations of harassment. In other words, the evidence fails to establish intolerable and/or detrimental working conditions that necessitated Ms. Galvan’s quit. See 871 IAC 24.26(4).

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.

Ms. Galvan voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Galvan 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 paid to Ms. Galvan.

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 whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representative's October 14, 2009, 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 whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw