

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA M CREIGHTON
Claimant

APPEAL NO. 12A-UI-02105-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HERITAGE WOODS OF ALEDO
Employer

**OC: 01/15/12
Claimant: Respondent (2-R)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 27, 2012, reference 01, that concluded she resigned after being given the choice of resigning or being discharged. A telephone hearing was held on March 19, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Heather Dickerhoof participated in the hearing on behalf of the employer. Exhibits One and A were admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time as a business office manager for the employer from March 14, 2011, to December 2, 2011. Heather Dickerhoof, the administrator, was the claimant's supervisor.

On November 2, 2011, Dickerhoof and Chris Decker, the regional director, met with the claimant to issue her a final written warning for unsatisfactory work performance. She was informed that if her performance did not improve, she could be discharged. Decker felt the criticism of her work performance was nit-picking and she was apprehensive about having a discharge on her record. She also believed Decker was insinuating that she should resign when she talked about people sometimes being in a job that did not fit them. So to avoid what she thought was an inevitable discharge and do what she thought Decker wanted, she asked Dickerhoof if she would give her a good reference if she resigned. Dickerhoof replied immediately that she would. The claimant then prepared a written resignation stating that she was quitting effective December 2, 2011.

The claimant worked until December 2, 2011, and then quit employment based on her resignation.

The claimant filed for and received a total of \$3,080.00 in unemployment insurance benefits for the weeks between January 15 and March 10, 2012.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The unemployment rules provide that a claimant who was compelled to resign when given the choice of resigning or being discharged has not voluntarily quit. 871 IAC 24.26(21). In this case, the claimant voluntarily quit her job; she was not discharged or told that if she did not resign, she would be discharged. The fact that she was on a final warning and was told that she could be discharged if her performance did not improve does not make the claimant's quitting involuntary because her performance could have improved and the employer could have decided there was no reason to discharge her.

871 IAC 24.25(33) provides that a claimant is considered to have voluntarily quit employment without good cause attributable to the employer if she left because she felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested her to leave and continued work was available. Finally, 871 IAC 24.25(28) provides that a claimant who leaves after being reprimanded is considered to have voluntarily quit employment without good cause attributable to the employer. The facts here are identical to the rules and the claimant therefore quit without good cause.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated February 27, 2012, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs