

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEANNA M OSTERLOH
Claimant

APPEAL NO. 11A-UI-02391-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 02/28/10
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Care Initiatives filed a timely appeal from a representative's decision dated February 16, 2011, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on March 23, 2011. Although duly notified, the claimant did not participate. The employer participated by Tom Halpin, hearing representative, and witnesses Amanda Shiltz, dietary supervisor, and Esther Rose, dietary aide/cook.

ISSUE:

At issue is whether the claimant quit employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Leanna Osterloh was employed by Care Initiatives as a part-time "late cook" from July 29, 2010, until January 7, 2011, when the claimant quit employment by failing to continue to report for available work and by turning in her company uniforms.

Ms. Osterloh's last day of work was December 28, 2010. The following day, the claimant was notified that the facility's dietary supervisor wished to speak with the claimant about a food issue. Ms. Osterloh did not come in for the warning meeting.

On January 1, 2011, the claimant called in and indicated that she had broken her foot and that she would provide medical documentation. Ms. Osterloh provided no medical documentation to the employer. Although Ms. Shiltz called Ms. Osterloh on one or more occasions on January 4, 2011, Ms. Osterloh did not return her calls. The claimant did not report for scheduled work and provided no notification to the employer regarding her absences on January 6 and 7, 2011. Subsequently, the claimant turned in her uniforms to the facility's business manager. Based upon the claimant's failure to report for scheduled work, her failure to provide notification, and the his turning in of her uniforms, the employer reasonably concluded the claimant had quit

employment. The claimant did not ask for any accommodations or time off work and the claimant had not been informed that she was to be discharged by the employer.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes the claimant quit employment for good cause attributable to the employer. It does not.

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.

The evidence establishes that Ms. Osterloh was not discharged by the employer but merely informed that the organization wished to meet with her about a food issue. The claimant did not report back to work after that date and instead called and indicated that she had a medical issue. Although the claimant had indicated that she would provide medical documentation, she did not do so. The claimant did not return repeated calls and did not report for scheduled work on January 6, or 7, 2011, and did not provide any notice that she would be absent. When the claimant returned her company uniforms later on January 7, 2011, the employer reasonably concluded the claimant had relinquished her position with Care Initiatives.

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about work condition must complain further if conditions persist in order to preserve eligibility for benefits. See Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

Inasmuch as the claimant did not give the employer an opportunity to resolve any of her complaints prior to leaving employment, and the claimant discontinued reporting for available work, the administrative law judge concludes the claimant's separation was without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated February 16, 2011, reference 02, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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