

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNDE L GRIFFITHS
Claimant

APPEAL NO. 11A-UI-01292-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEALTHY CONNECTIONS INC
Employer

OC: 01/03/10
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Healthy Connections (employer) appealed a representative's January 27, 2011 decision (reference 02) that concluded Cynde Griffiths (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 7, 2011. The claimant was represented by P.A. Henrichsen, Attorney at Law, and participated personally. The employer was represented by Matthew Hemphill, Attorney at Law, and participated by Rachael Owens, Assistant Executive Director.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 on December 5, 2007, as a part-time licensed practical nurse working from 4:00 to 10:00 p.m. The claimant signed for receipt of the employer's handbook.

The claimant was an in-home care person for an individual. The home was not clean and the claimant agreed to wash dishes. Sometimes the claimant would appear and the person would not be in the home or leaving. The claimant arranged her schedule around the family's needs. At times, she did not record the time she spent with the consumer and, therefore, was not paid for all her time worked. The claimant found the situation trying and asked the employer if she could change consumers. The employer did not have other work available.

On February 17, 2010, the consumer's mother told the claimant to leave the home after discussions about medication. Later that same day, the claimant wrote an e-mail to the employer indicating she would not return to the consumer's home. The employer accepted the claimant's resignation. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

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 law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The claimant argues that she quit due to intolerable or detrimental working conditions. The condition that she believed was intolerable or detrimental was the work environment.

871 IAC 24.25(21) and (27) provide:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

(27) The claimant left rather than perform the assigned work as instructed.

When an employee quits work because she is dissatisfied with the work environment or quits rather than perform the required tasks, her separation was without good cause attributable to the employer. The claimant was dissatisfied with her work environment and left work rather than perform the tasks required of her job due to that dissatisfaction. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit 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 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 claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

DECISION:

The representative's January 27, 2011 decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The issue of the overpayment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw