

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAELA J DALY**  
Claimant

**APPEAL NO: 12A-UI-09121-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURLINGTON CARE CENTER INC**  
Employer

**OC: 06/24/12**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(28) – Reprimand  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated July 19, 2012, reference 01, that held the claimant voluntarily quit employment with good cause attributable to the employer on June 29, 2012, and which allowed benefits. A telephone hearing was held on September 13, 2012. The claimant, and Attorney Ryan Gerling, participated. Teletha Guter, administrator; Nikki Pearson, dietary supervisor; and Sue Wisener, housekeeping/laundry supervisor, participated for the employer. Claimant Exhibit A and Employer Exhibit 1 were received as evidence.

**ISSUE:**

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the witness testimony, and having considered the evidence in the record, finds: The claimant (a/k/a Mika) began work for the employer on May 22, 2001, and she last worked as a full-time dietary employee on June 29, 2012. She worked the last five years under the supervision of Nikki Pearson. Claimant was scheduled to work 40 hours a week but she was free to pick up additional hours, if available.

On June 29 Supervisor Pearson confronted claimant about her cell phone at the work place and reminded her about a meeting the week before where restricted use was discussed. Claimant admitted the phone was hers, apologized, and then became agitated about the situation. Claimant got upset about the issue and walked out, stating she was quitting.

Claimant considered herself a good employee, working all scheduled hours and picking up additional hours when available. Claimant liked her job and did not intend on quitting on June 29. Claimant did not have an issue with the number of hours worked, just the lack of days off. During the period from March 25 to April 29, claimant only had two days off. From April 29 to May 22, claimant had 7 days off. From May 22 to July 6 claimant was scheduled two days off.

The employer scheduled three employees to work its two dining rooms, two aides, and one cook. Claimant believes during the period from March 25 through June 29, it was a weekly occurrence where she and only one other employee were on duty. The employer acknowledged that two employees had quit, but it was seeking replacements. Claimant admits she did not complain to the employer about a lack of days off and/or working a shift with less than three employees.

Claimant has received unemployment benefits on her claim.

### **REASONING AND CONCLUSIONS OF LAW:**

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 24.25(28) provides:

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:

(28) The claimant left after being reprimanded.

The administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer effective June 29, 2012 due to a verbal reprimand about her cell phone.

Claimant walked out and quit employment without notice or warning on June 29. She admits she did not intend to quit that day, which means she was not considering the issues she raised in this hearing for quitting. It is inconsistent for a person to complain about a lack of days off and work place shortages while picking up additional hours when made available. In addition, claimant never complained about days off. The record shows she had 11 days off during the March 25 through June 29 employment period. She does not complain about the 7 days off she had from April 29 to May 22.

It appears claimant had a knee-jerk reaction to the verbal reprimand given by her supervisor on June 29 to the point she let her emotion get the better of her good judgment and walked out. While it is understandable claimant felt the stress of working and caring for her family, her decision to quit is not for a good cause attributable to the employer.

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.

Since claimant has been receiving benefits before the disqualification imposed by this decision, the overpayment issue is remanded to Claims for a determination.

**DECISION:**

The department decision dated July 19, 2012, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to the employer on June 29, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw