

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY I BARRIENTOS
Claimant

APPEAL NO. 09A-UI-16517-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**Original Claim: 01/11/09
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Care Initiatives filed a timely appeal from an unemployment insurance decision dated October 21, 2009, reference 03, that allowed benefits to Terry I. Barrientos. After due notice was issued, a telephone hearing was held December 8, 2009, with Director of Nursing Julie Wessels and Administrator Shawn Mikles participating for the employer, which was represented by Josh Burrows of TALX UC eXpress. Ms. Barrientos did not provide a telephone number at which she could be contacted. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Terry I. Barrientos worked as a certified nursing assistant for Care Initiatives from March 3, 2009, until she resigned September 19, 2009. She was a full-time employee who limited her availability to Fridays, Saturdays, and Sundays. She resigned after seeing a schedule that showed her working 32 hours less in the pay period than normal. The reduction in hours had been at her request. Ms. Barrientos had not told Director of Nursing Julie Wessels or Administrator Shawn Mikles that she would be available for other hours on Monday through Thursday. Further work was available had she not resigned.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with 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 claimant has the burden of proof. See Iowa Code section 96.6-2. As noted above, the claimant did not participate in the hearing. The earlier decision was based upon a finding that the employer had unilaterally changed the claimant's conditions of employment. The evidence in this record, however, establishes that the reduction in hours was the direct result of the claimant's request not to be scheduled. Since the employer was not at fault for the reduction in hours, the administrative law judge concludes that the claimant left work without good cause attributable to the employer. Benefits are withheld.

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 question of whether the claimant must repay benefits already received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated October 21, 2009, reference 03, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of repayment of benefits is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw