

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DON L HARRIS
Claimant

APPEAL NO. 10A-UI-05015-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**Original Claim: 02/28/10
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 24, 2010, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 17, 2010. Claimant participated. Employer participated by Patti Steelman, human resources business partner; Cindy Peeler, associate chief nurse; and Krista Simmer, director of flexible staffing. The record consists of the testimony of Don Harris; the testimony of Patti Steelman; the testimony of Cindy Peeler; Claimant's Exhibits A through E and G through N; and Employer's Exhibits 1 through 8.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is an acute care hospital located in Des Moines, Iowa. The claimant was hired on March 20, 2008, as a scope technician. He was promoted to the position of centralized telemetry supervisor on July 5, 2009.

The claimant had a meeting with Cindy Peeler and Kristi Simmer on December 30, 2009, to discuss his progress and performance review for the period of December 24, 2008 through December 30, 2009. The claimant agreed to prepare an action plan concerning certain parts of his performance as a supervisor. A meeting was then held on February 1, 2010, to discuss this action plan. At that meeting, the claimant informed Ms. Peeler and Ms. Simmer that he wanted to "step down" as supervisor of the centralized monitoring unit. He indicated that he would like to remain as an employee of that unit.

Ms. Peeler asked the claimant to consider whether he really wanted to take this step. She stepped outside so that the claimant could speak with Ms. Simmer privately. When Ms. Peeler returned, the

claimant reiterated his desire to leave his position as supervisor. Ms. Peeler explained to the claimant that there were no openings in the department for a technician. There had been some vacancies but the internal processes were complete and the candidates to fill those positions were going to be made offers. She told the claimant that she would have to find out if the hiring process could be re-opened so that he could apply.

The claimant authored the following statement on February 1, 2010:

I (Don L. Harris) would like to step down from my Supervisor role in Central TeleMetry. I would like to remain full time in the scope/monitoring room as a scope tech.

(Exhibit 6)

On February 3, 2010, the claimant received a letter from Ms. Peeler. That letter stated as follows:

On Monday, February 1, 2010, you submitted in writing that you wished to step down from the Centralized Monitoring Supervisor position and wanted to be considered for a Scope Technician position. You stated that since you were stepping down from the Supervisor position that you would not need to work on the action plan which was due on February 1. I am accepting this as your resignation from the Supervisor position effective immediately.

The Scope Technician requisitions will be re-opened to allow you the opportunity to apply for the full-time and part-time positions. The positions will remain open until 4 pm on Friday, February 5.

To allow you the opportunity to apply for other positions as an internal candidate, you may remain a Mercy employee for the next 30 days. You will need to utilize accrued PTO and once your PTO is exhausted, you will be on an unpaid leave. If you have not secured another position by March 4, 2020, your employment with Mercy Medical Center will end.

(Exhibit 7)

The claimant did submit an application for a full-time scope technician position. He was scheduled for an interview on February 12, 2010. He cancelled the interview. He had consulted with friends and decided he no longer wanted to work for the employer.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The difficult issue to be confronted in this case is who initiated the separation of employment. The claimant testified that he did not intend to resign his position and did not know that he would have to

apply for the position of scope technician. He was under the impression that he could be assigned to what he considered to be vacant technician positions in lieu of being the supervisor. Ms. Peeler and Ms. Simmer both testified that the claimant was told that there were no open positions for a technician and that the hiring process had been completed for the vacancies that had existed. The only thing that had not been done was to offer the positions to the chosen applicants. The claimant was told that further inquiries would need to be made to determine if the hiring process could be reopened so that the claimant could submit an application and be considered.

After carefully reviewing all of the evidence in this case and weighing the credibility of the witnesses' testimony, the administrative law judge concludes that it was the claimant who initiated the separation of employment in this case. According to both Ms. Peeler and Ms. Simmer, the claimant did not particularly like the job of supervisor. His performance review showed that there were concerns about his skill as a manager, but the action plan was designed to help the claimant effectively transition to a supervisory role. There is no evidence that the employer intended to terminate the claimant. The claimant made the decision that he did not want to be the supervisor and his statement of February 1, 2010, shows that he wanted to "step down" as the supervisor. Both Ms. Peeler and Ms. Simmer testified that it was the claimant who brought up resignation and that he told both of them that he had considered the matter for some time and was not going to reconsider.

The claimant testified that he would not have stepped down if he did not think he would get a job as a technician and that his written statement of February 1, 2010, was not a resignation. This testimony is not credible for a number of reasons. First, the claimant was the supervisor and he clearly indicated in his statement of February 1, 2010, that he was stepping down from that position. Second, the claimant was aware that hiring had been essentially completed for the vacant technician positions, as he had responsibilities in the hiring process as set forth in his action plan. (Exhibit 4) There was no open technician position to which he could have been assigned. This fact supports the testimony of Ms. Peeler and Ms. Simmer that the claimant was informed that he would have to apply for open positions in the hospital in order to remain an employee beyond 30 days. Third, the claimant actually applied for the position and then cancelled his interview. When asked why he did so, the claimant said that he decided he no longer wanted to work at the hospital. He felt that there was a major personality conflict between him and Ms. Peeler and that he no longer wanted to work in a situation where she would be his supervisor. This piece of evidence shows that the claimant intended to sever the employment relationship and did so by resigning the position he held on February 1, 2010.

Iowa law states that an individual is disqualified from receiving unemployment insurance benefits when there is a voluntary quit unless there is good cause attributable to the employer. The claimant left his job because of the difficulties that he had with Ms. Peeler and described their relationship as a major personality conflict. A personality conflict with a supervisor is presumed to be a voluntary quit without good cause attributable to the employer. 871 IAC 24.25(22). Although the claimant may have had good personal reasons for leaving his job as centralized telemetry supervisor, these reasons are not good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits.

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 overpayment issue is remanded to the claims section for determination.

DECISION:

The representative's decision dated March 24, 2010, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

Vls/kjw