

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EDITH L CAREY**  
Claimant

**APPEAL NO. 10A-UI-05016-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 02/21/10**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated March 2, 2010, reference 01, that held the claimant voluntarily quit with good cause on February 21, 2010, and benefits are allowed. A telephone hearing was held on May 25, 2010. The claimant participated. Mike Terrill, Administrator; Shelly Mescher, Nurse; and Susan Schneider, Attorney, participated for the employer. Employer Exhibits 1 – 5 was received as evidence.

**ISSUES:**

Whether the claimant voluntary quit with good cause attributable to the employer.

Whether the claimant is overpaid benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant started work as a full-time C.N.A. on November 30, 2006. The claimant moved to part time on the third shift (three days a week) beginning October 2008. The claimant was issued a verbal warning on January 24, 2010, and a written warning by Nurse Mescher for job performance issues.

Nurse Mescher issued the claimant a final written warning on February 20, 2010. The claimant responded by stating "I am not signing it, I quit." The claimant quit her job, because she believed she was being harassed by Nurse Mescher. The claimant never complained to Administrator Terrill that she was being harassed, and she did not offer any employee comments in response to her discipline. The claimant had been supervised by Mescher throughout the course of her employment.

The claimant has received unemployment benefits on her current 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 without good cause attributable to her employer when she left her job on February 20, 2010 due to an employer final warning.

The claimant contends she quit with good cause due to supervisor Mescher harassment that is rejected as the reason for employment separation. The claimant announced her quit in response to a final warning that is not harassment. The claimant worked under Mescher's supervisor for three years without any documentation that she complained of harassment to her administrator or without any employee comment on her disciplinary warnings. The examples of harassment offered by the claimant were vague as to time and date, and otherwise within the bounds of what a supervisor may say to an employee given a substandard work performance.

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 the claimant has received benefits on her unemployment claim, this issue is remanded to Claims for a determination.

**DECISION:**

The decision of the department representative dated March 2, 2010, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to the employer on February 20, 2010. 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

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