

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSE M DIXON
Claimant

APPEAL NO. 08A-UI-03844-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISERVE INTERNATIONAL INC
Employer

**OC: 03/23/08 R: 01
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 15, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on May 7, 2008. Claimant participated. Employer participated through Tom Hoff, Rebecca Eckert, Alan Blakestead, and Brenna Reicks.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits, and if so, whether she is overpaid benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time resident assistant from May 22, 2007 until March 24, 2008 when she quit. She was hired without guarantee of hours or assignment location and had generally worked at a house with one low functioning and two high functioning women. She primarily helped them cook, clean, run errands and take medications. She worked a combination of day and overnight shifts. Employer decided to transfer her to work at another residence for three men, all low functioning. There was a meeting on March 21 when employer outlined the work schedule, work assignment and training plan. This included discussion of the residents' behaviors (biting, pinching, eating objects such as a zipper, and destruction of socks as an alternative to other things, wearing a hockey helmet with face guard to prevent self injury to his hands) and personal cares. Claimant reported to the residence on the first day of training, March 24, and told Eckert she would not clean the residents after they had a bowel movement since she had not received blood-borne pathogen training or how to handle violent behaviors. Eckert told her she would cover this information over the four days of training. As she was gathering the training materials claimant took a cigarette break and did not return or otherwise communicate with employer thereafter.

CPR and first aid classes via the Red Cross or local medical community are to be taken within the first year of employment but it was claimant's responsibility to locate and register for a class. Employer would pay the course fee. A dependent adult abuse class is offered every six months with the next one scheduled in April 2008 shortly after her separation. No formal outside class is required to learn about blood-borne pathogens.

Claimant has received unemployment benefits since filing a claim with an effective date of March 23, 2008.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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(6), (18), (21), (22), (27) 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 § 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 § 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:

- (6) The claimant left as a result of an inability to work with other employees.
- (18) The claimant left because of a dislike of the shift worked.
- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.
- (27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint, except in the case of established and reasonably known intolerable or detrimental working conditions. *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). See also *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005) where claimant was

not required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment if employer had or should have had reasonable knowledge of the condition. An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. *Polley v. Gopher Bearing Company*, 478 N.W.2d 775 (Minn. App. 1991).

Claimant had previously worked overnight shifts with at least one low functioning adult and employer was responsive to her requests for training. Claimant did not begin to give employer sufficient time to train her or provide the information and training requested. Nor did she take responsibility to search for a CPR class. Her decision to quit was not for any good cause reasons attributable to the employer. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The April 15, 2008, reference 01, decision is reversed. Claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Claimant is overpaid benefits in the amount of \$1,392.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs