

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAVONNE SCHONES
Claimant

APPEAL NO. 10A-UI-15724-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 10/17/10
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed an unemployment insurance decision dated November 9, 2010, reference 01, which held that Lavonne Schones (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 29, 2010. The claimant participated in the hearing. The employer participated through Amy Thornton, Director of Nursing; Casey Stevens, Administrator; and Tom Halpin, Employer Representative. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time licensed practical nurse/charge nurse from September 15, 2009 through September 24, 2010. She was hired to work the night shift and worked that shift until she requested to work the evening shift due to family responsibilities. The employer accommodated her request and the claimant was placed on second shift. The claimant liked working days, so the employer would have her fill in if an employee on dayshift was absent.

The claimant testified she had to be home when her 16-year-old son was home according to a judge since her son was released from rehab in February 2010. She never provided this information to the employer and never provided any court documentation to substantiate her claim. The claimant did tell the employer that she needed to be home at night because of her son but nothing else. She took some medical leave, but mostly worked the second shift through May 2010.

A daytime nurse quit during May 2010, so the employer allowed the claimant to fill in on that shift. The claimant still worked the second shift but also worked partial shifts which allowed her to get off work around 6:00 p.m. The employer assigned the partial shifts to the claimant due to the needs of another nurse who could not work beyond 2:00 p.m. Beginning in July 2010 the claimant began filling in during the daytime shift for a nurse who was on maternity leave.

Although the claimant wanted the daytime shift that was open due to a nurse leaving, the employer had to give that position to a registered nurse. The employer is required to have a certain number of registered nurses based on their census, and the registered nurse who applied could only work the daytime shift. After the employee on maternity leave returned, the claimant was going to return to her regular shift, but she refused to do so. The claimant called in and voluntarily quit over the telephone on September 24, 2010.

The claimant filed a claim for unemployment insurance benefits effective October 17, 2010 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

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 voluntarily quit on September 24, 2010 because she was going to go back to her regular shift and she did not want to do so. Although she was hired for third shift, the claimant requested second shift to be home at night, so the employer accommodated her request. The claimant subsequently filled in for several employees during the first shift when they were gone, but it was only temporary and the employer had never placed her on first shift permanently.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated November 9, 2010, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw