

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER M LE BEAU**  
Claimant

**APPEAL NO. 13A-UI-04360-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAINSTREAM LIVING INC**  
Employer

**OC: 03/03/13**  
**Claimant: Respondent (2-R)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the April 8, 2013 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on May 30, 2013. Claimant participated. Employer participated through Human Resources Manager Marcanne Lynch; Team Leader Jenni Stephenson; Program Coordinator Traci Miner; and Team Leader Tracy Moore. Employer's Exhibits One through Nine were received.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant overpaid benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time (40 hours) as a supported living technician from 2009 and was separated from employment on March 7, 2013. Her primary work site was on 99th Street in Clive. The employer's policy provides that it may change shifts, work schedules, and locations for which the person was hired. (Employer's Exhibit 1b) She was notified on January 14, 2013 that there were concerns about ongoing tension with a particular consumer and was later told she would be moved to a location in Urbandale for 35 hours per week with the same benefits on the 6:00 a.m. to 2:00 p.m. shift. She did not have daycare available that early, so the employer offered an assignment at 75th Street in Windsor Heights. It had the same shift and hours as she had at 99th Street. She declined because she has lifting restrictions of 50-pounds. She did not contact Moore, the site supervisor for that location, to discuss the issue. There are always two or three staff members on duty to assist with lifting if needed. There is no lifting required for two consumers. Another needs assistance with walking and has a lift recliner chair. The fourth consumer has a walker and can get up and down on her own. The employer was willing to

make accommodations for claimant so she would not be solely responsible for the consumers with mobility issues. She declined to work at either location.

Claimant received unemployment benefits since filing a claim with an effective date of March 3, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to the employer.

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).

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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(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 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:

(27) The claimant left rather than perform the assigned work as instructed.

871 IAC 24.25(32) provides:

(32) The claimant left by refusing a transfer to another location when it was known at the time of hire that it was customary for employees to transfer as required by the job.

The employer has the right to allocate its personnel in accordance with its needs and available resources. It attempted twice to accommodate claimant's schedule and hour/wage requirements but did not fire her. Claimant's decision to refuse the other work assignments and quit because of the employer's reasonable decision to move her to another work site was not supported by a good cause reason attributable to the employer. Benefits are denied.

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.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. The unemployment insurance law 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. However, the overpayment may not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. If so, the employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

**DECISION:**

The April 8, 2013 (reference 01) decision is reversed. Claimant voluntarily left the 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.

**REMAND:** The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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