

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LASHAWNDA M MILLER**

Claimant

**APPEAL NO. 10A-UI-14300-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHILDSERVE COMMUNITY OPTIONS INC**

Employer

**OC: 09/19/10**

**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated October 12, 2010, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 2, 2010. Claimant participated. Employer participated by Katie Ceolla, Staff Relations Coordinator, and Emily Garcia, Site Supervisor. The record consists of the testimony of Lashawnda Miller; the testimony of Katie Ceolla; the testimony of Emily Garcia; and Employer's Exhibits 1-2.

This case was heard in conjunction with 10A-UI-14299-VST. The administrative law judge believes that two agency decisions were issued on the identical claim.

**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 a non-profit agency that provides services to children with special health needs. The claimant worked at the Woodland site, which operates like a daycare center. The claimant was hired on November 1, 2008, as a teacher assistant. The claimant was on the per diem staff. This meant that her hours were varied and flexible. She earned \$8.32 per hour.

The claimant resigned her position on September 13, 2010. She resigned because she felt she had been treated unfairly. She gave three examples of unfair treatment. First, she felt that she had been guaranteed more hours, which were never given to her. Second, other employees got paid when they were not working. Third, her work was not appreciated.

The employer was changing the program it was using at the Woodland Center. The claimant was guaranteed a position as a per diem health aide. Her hourly wage would increase from

\$8.32 to \$9.70 per hour. In addition, there were going to be some full-time openings and the claimant was encouraged to apply for those full-time positions. The claimant resigned before the interviews were scheduled.

## **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 evidence established that it was the claimant who initiated the separation of employment. She intended to sever the employment relationship and did so by giving her employer her written resignation. The issue, therefore, is whether the claimant left for good cause attributable to the employer.

The claimant was asked specifically why she resigned and she cited "unfair treatment" as her reason. The evidence does not support the claimant's allegation that she was treated unfairly. The claimant felt that she was not getting the hours that she had been promised and that other employees who had less seniority were getting more hours. The employer provided testimony that the claimant was a member of the per diem staff and that a certain number of hours were never guaranteed. What apparently upset the claimant were her hours on August 26, 2010. She was only scheduled for two and one-half hours. The employer provided credible testimony that the claimant had missed several days from August 16, 2010, through August 25, 2010. The employer had to be certain adequate and reliable staffing was present. The claimant had not been reliable for the prior ten days.

The employer also explained that some full time employees might get paid and not be present because full time employees earned PTO, which is essentially paid leave. All employees punch a time clock and the employer could not envision a situation where an employee would be paid who was not present.

The claimant did do some jobs that teachers might do because she assisted with lesson plans. The claimant could not be hired as a teacher because she did not have the four-year college degree. The employer, who was making some changes in the program, wanted the claimant to stay. Her hourly wage was increased and she had the opportunity to apply for a full-time job. The claimant's testimony suggested that she was unhappy that the interviews had not been scheduled. She quit before she completed the process for full-time employment.

There is no credible evidence that the claimant quit for good cause attributable to the employer. Accordingly, 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 decision of the representative dated October 12, 2010, reference 02, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant

is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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