

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI L WARD
Claimant

APPEAL NO. 07A-UI-05974-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOONE FITNESS LLC
Employer

**OC: 05/06/07 R: 02
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Boone Fitness, filed an appeal from a decision dated June 6, 2007, reference 02. The decision allowed benefits to the claimant, Terri Ward. After due notice was issued a hearing was held by telephone conference call on July 2, 2007. The claimant participated on her own behalf. The employer participated by Co-Owner Don Romig.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Terri Ward was employed by Boone Fitness from May 1 through 11, 2007 as a full-time manager. She had been employed by the previous owner since December 2005 during which time she had problems with a personal trainer, Kevin, who was an independent contractor with the gym. This had to do with their business relationship over the sale of supplements at the gym but did not constitute part of Ms. Ward's job duties as the manager at the fitness center.

She also felt Kevin was not responsive to the needs of his clients, cancelling appointments and not making himself otherwise available or returning phone calls. Ms. Ward was not held accountable for his actions by her employer but she felt awkward when people would complain.

When the new owners were still negotiating with the previous owners the claimant had submitted a resignation to the previous owners, citing her problems with Kevin. Prior to the sale being completed the new owners, Don Romig and his partner, asked the claimant to stay and she agreed, though she wanted the problems with Kevin resolved. Mr. Romig said he would deal with it but it would not be for "several weeks" until he was able to get acquainted with the business and determine what the problem was. He also requested her to give two weeks' notice if she decided not to stay.

On May 1, 2007, the new owners took over and that was the day Ms. Ward decided to quit. She felt the new owners had not addressed her concerns soon enough and so on May 4, 2007, she

notified Mr. Romig that she would be resigning effective May 11, 2007, believing that her earlier stated intention to the previous owners she wanted to resign would constitute the second week's notice. She had assumed the employer would set up a meeting for her and Kevin to discuss their concerns but had never made it known to Mr. Romig or his partner that she desired such a meeting. She felt she was only being asked to stay to explain how the computer system worked although the new owners had never told her that her tenure with them would be of such limited duration.

Terri Ward has received unemployment benefits since filing a claim with an effective date of May 6, 2007.

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.

The claimant quit because she did not get along with Kevin, the independent contractor who worked in the facility but was not an employee. While it is understandable this person's conduct was frustrating, it cannot be considered to be a detrimental or hostile work place. Ms. Ward was not held in any way accountable for his conduct, was not reprimanded or disciplined when Kevin did not perform his contractual duties. The problems she had with him over insurance and the sale of supplements was not connected with her work but was an outside business arrangement unconnected with the job duties required of her by the employer as manager.

The claimant was content to stay on and assist the new owners and her assertion that it was only for the limited purpose of explaining how the computer system worked is not supported by the record. The new owners kept her on at the same hours, wages and job duties she had with the previous owners and nothing was said by either party about her employment being limited to only that amount of time it would take to explain the computer system. This is supported by the fact the employer told Ms. Ward he would like at least two weeks' notice if she was going to quit and her testimony supports this because she stated she felt she only had to give one weeks' notice since she had mentioned the possibility she would quit to the prior owner.

Whatever the claimant's problems with Kevin might have been, they do not constitute a change in the contract of hire, a hostile work environment or detrimental working conditions, but merely an inability to work with other staff. Under the provisions of 871 IAC 24.25(6) this is not good cause attributable to the employer, especially as she did not give the new owners any reasonable amount of time to deal with her concerns, but notified them of her decision to quit three days after they assumed ownership. The claimant is disqualified.

Iowa Code section 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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of June 6, 2007, reference 02, is reversed. Terri Ward is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$2,150.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs