

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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ASSISTED LIVING CONCEPTS INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-06077-ET
OC: 05-14-06 R: 01
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 2nd Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a decision dated June 2, 2006, reference 01, that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 3, 2006. The claimant participated in the hearing. Colleen Alesch, Administrator, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having heard the testimony and examined the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time personal service attendant for Assisted

Living Concepts from November 2, 2005 to May 17, 2006. At the time of hire the claimant was a medication manager but after several errors the employer offered her the position of personal service attendant, working mostly 2:00 p.m. to 10:00 p.m., beginning April 1, 2006, and the claimant accepted the position. At the time of hire the claimant stated she was available to work any shift. At the beginning of May 2006 the claimant talked to the employer and indicated she did not want to work the 2:00 p.m. to 10:00 p.m. shift but the employer told her it needed her to do so. On May 17, 2006, the claimant called Administrator Colleen Alesch at home and said she was quitting because of the 2:00 p.m. to 10:00 p.m. shift. Ms. Alesch went to the facility to ask the claimant to provide her resignation in writing but the claimant refused and left without giving notice.

The claimant has received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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. 871 IAC 24.25. Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant maintains that the employer guaranteed her the night shift prior to hire, the employer denies doing so. Additionally, the contract of hire changed when the claimant accepted the personal service attendant position April 1, 2006, and performed that job on the 2:00 p.m. to 10:00 p.m. shift for approximately seven weeks. In Olson v. EAB, 460 N.W.2d 865 (Iowa App. 1990), the court held that the claimant's resignation seven months after a substantial change in the contract of hire was a disqualifiable event because the claimant was held to have acquiesced in the changes. The claimant was not guaranteed the night shift and had agreed to work any shift when hired. Furthermore, even if she had been guaranteed the night shift at the time of hire, she agreed to take the personal service attendant position and was not guaranteed the night shift in that job. Consequently, the administrative law judge concludes the claimant has not met her burden of proving her leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

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.

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

DECISION:

The June 2, 2006, reference 01, decision is reversed. The 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. The claimant is overpaid benefits in the amount of \$1,470.00.

je/pjs