

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUTH M COPSEY

Claimant

APPEAL NO. 12A-UI-09515-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREAT RIVER CARE CENTER

Employer

OC: 07/08/12

Claimant: Respondent (2-R)

Section 96.5-1 – Quit

STATEMENT OF THE CASE:

The employer, Great River Care Center, filed an appeal from a representative's decision dated August 1, 2012, reference 01. The decision allowed benefits to the claimant, Ruth Copsey. After due notice was issued, a hearing was held in Decorah, Iowa, on October 24, 2012. The claimant was paged in the main waiting area at 9:00 a.m. and again at 9:16 a.m. No one was present and the claimant did not participate. The employer participated by Administrator Cheri Leachman and Director of Nursing Julie Mayne.

ISSUE:

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

FINDINGS OF FACT:

Ruth Copsey was employed by Great River Care Center from July 27, 2009, until June 26, 2012, as a full-time MDS coordinator. Her job was to do admissions paperwork to the facility as well as reviewing other patient records. One of the important aspects of admission documents is to ascertain if there are any "advance directives" from the client or the client's family. These would include such orders as to whether or not CPR was to be performed on a resident found unconscious or not breathing or whether there was a "do not resuscitate" order.

On June 26, 2012, Administrator Cheri Leachman and DON Julie Mayne met with Ms. Copsey about some concerns with the paperwork being done on the admissions. Ms. Copsey was not asking residents or their family members about the advance directives and in one case actually falsified the record. Ms. Copsey had written down the resident was to be given CPR, but the family said that this was not what they had wanted and that the claimant had never discussed the issue with them. It was the intention of the employer to find out what the problem was with the incorrect paperwork or paperwork missing altogether, and whether the claimant needed advance training to correct the problem.

Ms. Copsey was not in danger of being fired, because the employer was essentially using the meeting as a fact-finding opportunity to determine the precise nature of the problem. At some point during the meeting, the claimant asked Ms. Leachman for a piece of paper and it was

given to her. The administrator asked her what she was doing and Ms. Copsey said she was sending in her resignation. The resignation was submitted and accepted immediately. Continuing work was available to her had she not resigned.

Ruth Copsey has received unemployment benefits since filing a claim with an effective date of July 8, 2012.

The administrative law judge learned later on the day of the hearing the claimant had contacted the Appeal Section in Des Moines, Iowa, shortly after the scheduled hearing time of 9:00 a.m. She stated she had been given permission to participate by phone. No such permission had been given by the administrative law judge.

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.

871 IAC 24.25(28) 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:

- (28) The claimant left after being reprimanded.

871 IAC 24.25(33) 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:

- (33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The claimant quit during the course of a fact-finding meeting regarding problems with her work performance. She was not in danger of being fired but apparently felt that her work was so unsatisfactory the employer intended to fire her. This was a false assumption on her part. Quitting after being reprimanded is not considered to be good cause attributable to the employer for quitting under the provisions of the above administrative code section. The claimant is disqualified.

The claimant had not received permission from the administrative law judge to participate in the in-person hearing by telephone. Such a request could not be granted in any event, under the provisions of 871 IAC 26.6(4). That administrative code section allows participation of witnesses or representatives by phone at an in-person hearing only if there is at least one witness present in the hearing room. The claimant did not have any other witnesses other than herself and so she could not be permitted to participate by telephone.

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 claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of August 1, 2012, reference 01, is reversed. Ruth Copsey is disqualified and benefits are withheld until she has requalified by earning ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw