

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORINA S CARLE
Claimant

LUTHERN SERVICES IN IOWA INC
Employer

APPEAL 17A-UI-07638-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/09/17
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the July 26, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 16, 2017. The claimant did not participate. The employer participated through Director of Services for People with Disabilities Cody Lewton. Employer's Exhibits 1 and 2 were received into evidence.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a direct support professional from September 28, 2016, until this employment ended on October 7, 2017, when she voluntarily quit.

When claimant was initially hired for her position she was told she would be responsible for planning activities with clients. She was also told she would be responsible for transporting clients to the activities and being present with the clients at the activities. However, claimant did not learn until after she accepted employment and began working, that she would sometimes be required to incur costs associated with these activities out of pocket and would only be reimbursed by the employer for these costs on a monthly basis. Claimant explained to the employer that she could not afford to incur these costs up front and resigned effective immediately. The claimant filed a new claim for unemployment insurance benefits with an effective date of July 9, 2017. Both the employer and the claimant participated in a fact finding

interview regarding the separation on July 25, 2017. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.26(23) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Here, the employer did not necessarily deliberately misrepresent the type of work claimant would be doing, but withheld key information on the expectations of the job. Specifically, the employer did not inform claimant, prior to her accepting the position, that she may be required to pay some expenses associated with her work out of her own pocket and that these expenses would only be reimbursed on a monthly basis. For claimant, this was key information that made it impossible for her to do the job, as she could not afford to pay these expenses upfront. Accordingly, claimant quit with good cause attributable to the employer and benefits are allowed, provided she is otherwise eligible. The issues of overpayment and participation are moot.

DECISION:

The July 26, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/RVS