

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI SCHMACKER
Claimant

APPEAL NO: 11A-UI-09772-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

OC: 06/26/11
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Central Iowa Hospital Corporation (employer) appealed an unemployment insurance decision dated July 19, 2011, reference 01, which held that Terri Schmacker (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 18, 2011. The claimant participated in the hearing. The employer participated through Jessica Brandt, Phlebotomy Supervisor and Christy Niehaus, Human Resources Business Partner. Employer's Exhibits One and Two and Claimant's Exhibits A through C were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time phlebotomist from December 29, 2008 through June 24, 2011. She received a series of disciplinary warnings but was not in danger of being discharged. The employer has a progressive disciplinary policy with four steps before an employee is discharged. The claimant was only on the first step of that progressive disciplinary policy.

Supervisor Jessica Brandt had a one-on-one meeting with the claimant on June 24, 2011 to discuss the expectations of possessing the phlebotomy phone. The meeting was a verbal warning as it was believed the claimant had deviated from that policy. After the meeting, the claimant walked into the office of Kim Von Ahsen, Manager Client Services and handed in her phlebotomy coat, phone and badge. She stated that she can no longer take it and "you've got what you wanted." The claimant walked out after that and Ms. Von Ahsen told her that she needed to know whether the claimant was resigning because if she was, she could not take

back her resignation. The claimant went back into the office and Ms. Von Ahsen tried to talk to the claimant about the meeting that was just held but the claimant stated, "I don't want to talk to her and I'm done." She walked out after that.

The claimant filed a claim for unemployment insurance benefits effective June 26, 2011 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit on June 24, 2011 by turning in her phlebotomy coat, phone and badge to Kim Von Ahsen. She carried out that intent by walking out after telling the employer that she "can't take it anymore and you have got what you wanted." The law presumes it is a quit without good cause attributable to the employer when an employee leaves after being reprimanded. 871 IAC 24.25(28).

The claimant contends she was fired but admitted the employer has a progressive disciplinary policy and she had not received a final disciplinary warning. She also admitted she was never told she was fired. Where an individual mistakenly believes that she is discharged and discontinues coming to work (but was never told she was discharged), the separation is a voluntary quit without cause attributable to the employer. *LaGrange v. Iowa Department of Job Service*, (Unpublished Iowa Appeals 1984).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an

overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated July 19, 2011, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs