

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANETTE DONOVAN
Claimant

APPEAL NO: 08A-UI-03565-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

NCS HEALTHCARE OF IOWA LLC
Employer

OC: 03-09-08 R: 02
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefits

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 4, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on April 24, 2008. The claimant participated in the hearing. Dennis Harker, General Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time fill technician for NCS Healthcare of Iowa LLC from June 12, 2007 to March 3, 2008. The claimant was experiencing problems with the time clock and the employer changed her time card to credit her with time. She said the time clock was not working correctly but when the employer watched to insure there was not a problem it saw the claimant come in late and blame it on the time clock. Consequently, the employer did not credit her with that time she was late. The claimant was also upset because she wanted to use two days of sick leave to attend a dart tournament and the employer made her use vacation time. The claimant asked for three days off to move and the employer granted it. She then asked for three more days off and was denied and was a no-call no-show Saturday, Monday and Tuesday. The employer tried to call her on Wednesday but was not able to reach her. It asked two of her friends if she planned to return to work and they said she was not coming back because she was upset about the payroll issues. The claimant testified she called the employer Saturday and said she was not coming back. The employer denies receiving a phone call from her. During the fact-finding interview the employer learned the claimant also quit because she was upset that a supervisor was sexually harassing two women that worked there. Although she testified she talked to the head pharmacist, supervisor and general manager about the

problem the employer testified it was unaware of her allegations and the women had not made any complaints.

The claimant has claimed and 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 unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). 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. It appears the claimant was upset and voluntarily quit because of the time clock situation and being told she had to use vacation rather than sick leave to attend a dart tournament. While the time clock may have been off once she was credited for her time and the employer credibly testified it watched the claimant come in late on the other occasion and blame it on the time clock and that it docked her pay in response. The claimant has not established that the time clock problem was such that it justified her quitting her job for good cause attributable to the employer. The remaining issue is whether the claimant was exposed to sexual harassment. The administrative law judge cannot conclude beyond a preponderance of the evidence that she was. The employer credibly testified that she did not report the supervisor's conduct toward the two co-workers to him and he was not aware of her allegations until the fact-finding interview. There were no other complaints lodged against that supervisor and it seems that if the problem was severe enough to cause the claimant to voluntarily quit she would have reported it to the general manager or the 800 number provided for such situations. Under these circumstances the administrative law judge cannot conclude that the claimant's 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 April 4, 2008, 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 \$750.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs