

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

KRISTI J STROWDER
820 SE HARPER DR
WAUKEE IA 50263-8447

ARBOR SPRINGS OF WDM LLC
7951 EP TRUE PKWY
WEST DES MOINES IA 50266

Appeal Number: 06A-UI-02055-DT
OC: 01/15/06 R: 02
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, 4th 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 Overpayment of Benefits

STATEMENT OF THE CASE:

Arbor Springs of West Des Moines, L.L.C. (employer) appealed a representative's February 7, 2006 decision (reference 02) that concluded Kristi J. Strowder (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 9, 2006. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Bridget McLemore appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on February 21, 2005. She worked full time as a certified nursing aide (CNA) on the night shift (10:00 p.m. to 6:30 a.m.) of the employer's long-term care nursing facility. She last worked the night of November 10, 2005. She was a no-call, no-show for her shifts on November 11 and November 14, 2005, and did not respond to the employer's attempts to call her on those days. On November 22, 2005 the claimant contacted Ms. McLemore, the office manager, to get her final paycheck and acknowledged that she had quit. She indicated the reason was her frustration regarding the accuracy of her paychecks.

The claimant's paychecks were subject to correction for errors because the claimant routinely failed to clock in for her shifts. The area in which the time clock was located was locked, and the claimant had lost her key to the area. She refused to pay the replacement cost for the key as specified by the employer's policies, and she failed to have another employee let her into the area so she could clock in. Therefore, she worked numerous shifts for which she had not clocked in, resulting in short paychecks. When the claimant went to Ms. McLemore and established that she had worked the missing shifts, the employer issued supplemental paychecks. For the paycheck issued on November 7, 2005, there had been no errors as Ms. McLemore had the claimant check her time clock print out and make corrections prior to the paycheck being issued.

The claimant established a claim for unemployment insurance benefits effective January 15, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,569.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code §96.6-2. Failing to receive proper pay when due can be good

cause for quitting, but in this case, the failure to timely receive proper pay was due to the claimant's own actions, and was not attributable to the employer. Deshler Broom Factory v. Kinney, 2 N.W.2d 332 (Nebraska 1942). The claimant has not satisfied her burden. 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 representative's February 7, 2006 decision (reference 02) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 11, 2005, benefits are withheld until such time as the claimant 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 \$2,569.00.

ld/tjc