

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAMEESHA NATHANIEL
Claimant

APPEAL NO: 13A-UI-03104-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 01/06/13
Claimant: Appellant (1R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 8, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 12, 2013. The claimant participated in the hearing. Carie Jaster, Human Resources Generalist, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment.

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 manufacturing assembler for Whirlpool from June 5, 2012 to January 8, 2013. The claimant failed to call or show up for work January 3, 4 or 7, 2013, and the employer determined she voluntarily quit her job.

The employer uses a call-in line that will allow an employee to leave a message stating she will be absent or speak directly to a human resources employee. The claimant successfully used that system when she called in to report she had two flat tires and would be absent June 12, 2012; her car overheated July 3, 2012; she had no childcare September 25, 2012; her mother was in the hospital and she had no childcare October 19, 2012; her car broke down October 31, 2012; the weather was bad and she had no power or childcare December 20, 2012; she had no power or childcare December 21, 2012; and that she was ill January 2, 2013. She did not call the employer January 3, 4 or 7, 2013, to report she was ill and would not be at work. She testified she had the flu, saw her doctor and received a note excusing her from work but the note did not list specific dates and she did not provide it to the employer. She stated she called the employer and spoke to a supervisor and said she would not be in for a couple days and “decided to let my job go.”

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 his 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.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was well aware of the employer's call-in procedure as she had used it on at least nine previous occasions. While she stated she had a doctor's excuse covering her final absence, she failed to provide it to the employer and did not call the employer January 3, 4 or 7, 2013, to report her absences, stating instead she decided to let her job go. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive work days in violation of the employer's policy, she is considered to have voluntarily left her employment without good cause attributable to the employer. Therefore, benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The March 8, 2013, reference 01, decision is affirmed. 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 he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css