

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOMINIQUE D TINDRELL
Claimant

APPEAL NO: 10A-UI-11004-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 06/13/10

Claimant: Respondent (4/R)

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

STATEMENT OF THE CASE:

Five Star Quality Care, Inc. (employer) appealed a representative's August 2, 2010 decision (reference 02) that concluded Dominique D. Tindrell (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 October 20, 2010. 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. Donna Manning appeared on the employer's behalf. 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:

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 10, 2009. She worked full time as a certified nursing aide (CNA) in the employer's Des Moines, Iowa long-term and skilled nursing facility. Her last day of work was April 23, 2009. On April 27, 2009 the claimant presented the employer with a doctor's note indicating that she could not work during the remainder of her pregnancy. As a result, on May 1, 2009 the employer placed the claimant on PRN (*Pro re nata* - commonly used in medicine to mean "as needed") status, because the claimant had not worked for the business long enough to qualify for a sufficiently long leave of absence. The claimant was instructed to inform the employer when she was released and able to return to her prior position. The employer understood that the claimant was due to give birth in about July 2009.

The claimant never recontacted the employer to return to her prior position. When the employer had not heard from her by August 13, 2009, it removed her from its system for job abandonment.

Agency records indicate the claimant initially established an unemployment insurance benefit year effective April 26, 2009. She was deemed ineligible to receive unemployment insurance benefits as not able and available for work by a representative's decision (reference 02) issued on June 10, 2009. Another representative's decision (reference 04) was issued on July 30, 2009 indicating that the medical issue was resolved so that the claimant was then able and available for work. She began receiving unemployment insurance benefits effective the benefit week ending August 1, 2009. After two weeks, her claim became inactive, not to be reopened until the week beginning January 17, 2010. Agency records indicate no wages earned by the claimant in the third and fourth quarters 2009, or in the first quarter 2010. Upon reopening her claim effective January 17, 2010, the claimant then received unemployment insurance benefits through the expiration of that benefit year on April 25, 2010.

After expiration of the 2009 claim year, the claimant established a new claim year effective June 13, 2010. Her new weekly benefit amount was calculated to be \$198.00. A new notice of claim was sent to the employer, which was now a base period employer for the new claim year. The employer protested, resulting in the issuance of the representative's decision in this case, and the employer's appeal of that decision. Agency records indicate that in the second quarter 2010 the claimant had wages from covered employment with other employers in excess of \$1,980.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 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 and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). 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. The claimant has not satisfied her burden. Benefits are denied as of July 26, 2009 until the claimant has requalified. The administrative law judge further concludes from information contained in the administrative record that as of June 13, 2010 the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed after that date and the account of the employer shall not be charged.

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 § 96.3-7. In this case, the claimant has received benefits in her 2009 claim year but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded to the Claims Section.

DECISION:

The representative's August 2, 2010 decision (reference 02) is modified in favor of the employer. The claimant voluntarily left her employment without good cause attributable to the employer. As of July 26, 2009, 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. As of June 13, 2010, the claimant has requalified, and is eligible to receive benefits after that date. The employer's account is not subject to charge. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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