

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLETTE C BURKLE
Claimant

APPEAL NO: 11A-UI-04543-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRN STAFFING INC
Employer

OC: 10/24/10
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

PRN Staffing, Inc. (employer) appealed an unemployment insurance decision dated April 1, 2011, reference 08, which held that Colette Burkle (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 May 16, 2011. The claimant participated in the hearing. The employer participated through owner Kathleen Reynolds and Liz Fay, Office Manager. 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 hired as a certified nursing assistant from August 30, 2010 through November 13, 2010. She called off sick from her assignment on November 14, 15 and 16, 2010 due to back pain and provided a doctor's note excusing her from work for all three days. The claimant was released to return to work without restriction on November 17, 2010 but when she called her employer and spoke with owner Kathleen Reynolds, the claimant reported that her back still hurt. She told the employer that her back actually hurt so bad that she could not stand up straight.

Based on the claimant's statement, the employer told her she needed to go back to the doctor to confirm it would be safe for her to return to work. The claimant spoke to her doctor, who indicated he could not provide any note in addition to the work release on November 17, 2010 since he could not guarantee that she would never again pull a muscle in her back. The claimant never contacted the employer after that date. She never advised the employer that her doctor would not write her another excuse and the employer testified that the claimant would have been returned to work if the employer knew that information. The employer also stated

that the claimant has never been fired and she can return to work at any time. The claimant testified in an appeal hearing on January 14, 2011 that she had decided on November 20, 2010 that she was not going to pursue returning to work.

The claimant filed a claim for unemployment insurance benefits effective October 24, 2010 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 and acted to carry it out when she failed to contact the employer after November 17, 2010. Based on the claimant's statement that her back hurt so bad she could not stand up straight, it was reasonable for the employer to ask for an additional medical excuse.

However, the claimant failed to contact the employer after that conversation and testified in a previous appeals hearing that she was not going to pursue working as of November 20, 2010. The claimant was never discharged and she does not claim the employer told her she was discharged but even if she believed she had been discharged, that does not change the outcome. Where an individual mistakenly believes that she is discharged and discontinues coming to work (but was never told he 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 April 1, 2011, reference 08, 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