

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRICIA J KINKADE**  
Claimant

**APPEAL NO. 09A-UI-01813-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 12/14/08 R: 03  
Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Care Initiatives filed an appeal from a representative's decision dated January 27, 2009, reference 03, which held that no disqualification would be imposed regarding Tricia Kinkade's separation from employment. After due notice was issued, a hearing was held by telephone on February 26, 2009. The employer participated by Pam Tallman, Administrator, and Rose Niemeyer, Director of Nursing. Exhibits One and Two were admitted on the employer's behalf. The employer was represented by Lynn Corbeil of Talx Corporation. Ms. Kinkade did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Ms. Kinkade was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Kinkade began working for Care Initiatives on October 29, 2008 as a full-time aide. Her last day at work was December 6, 2008. She did not call or report for work on December 7. The employer called her on December 8 and she indicated she had not been at work because she had bad tires and was afraid to drive on them. She also told the employer she wanted to transfer to the day shift. The employer agreed to switch her to the day shift but told her it could not be effective until December 18. She was to work her normal shift until December 18. The employer did not hear anything further from Ms. Kinkade after the phone conversation of December 8. Continued work would have been available if she had continued reporting for such work.

Ms. Kinkade filed a claim for job insurance benefits effective December 14, 2008. She has received a total of \$903.00 in benefits since filing the claim.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that Ms. Kinkade abandoned her job when she stopped reporting for available work. As such, her separation is considered a voluntary quit. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Kinkade did not participate in the hearing to explain why she stopped reporting for available work.

Ms. Kinkade told the employer on December 8 that she had not been at work because her tires were bad and she was afraid to drive on them. The lack of transportation to work is not attributable to the employer unless the employer had agreed to provide transportation. 871 IAC 24.25(1). Since Care Initiatives had not agreed to provide Ms. Kinkade with transportation to work, her lack of reliable transportation did not constitute good cause attributable to the employer for quitting. Since the evidence of record does not establish any good cause attributable to the employer for quitting, benefits are denied.

Ms. Kinkade has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from a reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Ms. Kinkade will be required to repay benefits already received.

**DECISION:**

The representative's decision dated January 27, 2009, reference 03, is hereby reversed. Ms. Kinkade quit her employment for no good cause attributable to the employer. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Kinkade will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs