

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA E VARGAS
Claimant

APPEAL NO: 13A-UI-03458-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**R J PERSONNEL INC
TEMP ASSOCIATES**
Employer

**OC: 12/30/12
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(35) – Non-Job Related Illness or Injury
Section 96.4-3 – Able and Available
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 15, 2013, reference 05, that held claimant was not discharged for misconduct on February 19, 2013, and benefits are allowed. A telephone hearing was held on May 17, 2013. The claimant, and interpreter, Anna Pottebaum, participated. Jen Bremel, Account Manager, participated for the employer.

ISSUES:

Whether claimant voluntarily quit without good cause attributable to the employer.

Whether claimant was able and available for work.

Whether claimant is overpaid UI benefits.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant worked for the employer as full-time laborer on assignment at Micro-Surface Finishing Products from February 9, 2012 to February 19, 2013. The claimant suffered a non-job-related work injury at home to her left wrist. Due to work restrictions (left wrist splint), she was unable to perform all of her job duties until she received an unrestricted work release to return on March 6. She was put back to work on March 7.

The department record shows claimant reported \$144.00 earnings the week ending February 23, and she received a partial UI benefit of \$128.00. She reported no earnings the week ending March 2 and received a UI benefit of \$218.00. She reported \$100.00 earnings the week ending March 9 and received a partial UI benefit of \$172.00.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The administrative law judge concludes claimant voluntarily left employment without good cause attributable to the employer on February 19, 2013 due to a non-job-related injury that precluded her from performing all of her job duties due to work restrictions (left wrist splint) imposed by her

doctor. She did not meet the availability requirements of the law during the period of her unemployment.

The employer is not obligated to find some job for claimant she can perform when she suffers a non-job-related injury with a restriction that prevents her from doing her normal job.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has been disqualified in this matter after receiving UI benefits, the overpayment is remanded to claims for a decision.

DECISION:

The department decision dated March 15, 2013, reference 05, is reversed. The claimant voluntarily left without good cause attributable to the employer on February 19, 2013. She does not meet the availability requirements of the law during her period of unemployment. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs