

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CATHERINE HATCHER**  
Claimant

**APPEAL NO. 10A-UI-09884-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CON AGRA**  
Employer

**OC: 05/16/10**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

Con Agra (employer) appealed an unemployment insurance decision dated June 28, 2010, reference 01, which held that Catherine Hatcher (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 August 31, 2010. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted and, therefore, did not participate. The employer participated through Jennifer Murphy, Human Resources. Employer's Exhibits One through Ten were admitted into evidence. Based on the evidence, the arguments of the party, 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 having considered all of the evidence in the record, finds that: The claimant was employed as a full-time sanitation worker from February 26, 2003 through May 13, 2010. She had longstanding problems with attendance dating back to 2007. The claimant was actually terminated for excessive attendance on January 8, 2008, but she was able to continue working through the union and signed a last chance agreement on January 12, 2009.

The claimant's last day of work was April 20, 2010 and she was excused from work through April 27, 2010. She was medically released to return to work on April 28, 2010, but failed to return. The claimant filed for short-term disability on April 22, 2010 and also applied for leave under the Family Medical Leave Act (FMLA). That was the last day she had contact with the employer. Liberty Mutual, the company who administers FMLA for the employer, sent the claimant a letter on April 22, 2010 advising her of her requirements and of the potential consequences for failure to comply with those requirements.

The short-term disability was denied as of April 28, 2010, since the claimant was released to return to work on that date. The FMLA paperwork was required to be returned to the employer by that same date, but no paperwork was provided. The employer sent the claimant a letter dated May 3, 2010 stating that her leave was not approved, since she had not completed the paperwork. The letter specifically stated that if she failed to contact the employer, she would be considered absent without leave. The employer sent a letter dated May 10, 2010 advising the claimant she was considered to have quit her employment due to job abandonment.

The claimant filed a claim for unemployment insurance benefits effective May 16, 2010 and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

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 by failing to call or return to work after April 22, 2010, even after numerous letters were sent to her.

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. She has not satisfied that burden and 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 June 28, 2010, reference 01, 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw