

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA HINDS**

Claimant

**APPEAL NO: 11A-UI-06730-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEALTH CARE MANAGEMENT INC**

**GARDEN VIEW CARE CENTER**

Employer

**OC: 04/17/11**

**Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

HCM, Inc. (employer), doing business as Garden View Care Center, appealed an unemployment insurance decision dated May 11, 2011, reference 01, which held that Amanda Hinds (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 June 16, 2011. The claimant participated in the hearing. The employer participated through Dawn Collins, Director of Nursing. 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 was discharged for misconduct sufficient to warrant a denial of unemployment 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 employed as a full-time certified nursing assistant in this long-term care facility from November 8, 2010 and she worked through March 27, 2011 when she injured her knee on her way home. She went to the emergency room on March 28, 2011 and was sent to a specialist on March 29, 2011. The claimant was given crutches at the doctor's office and the physician provided a medical note which said she needed to "take it easy" and it restricted her from weight bearing on her left leg. The claimant gave the medical excuse to her employer who accepted it as a release from work even though it did not specifically take her off work.

The claimant returned to work on April 4, 2011 without a release to return to work. She was limping and the employer called her into the office and advised her that she needed a work release before she could return to work. The claimant stated that she was going to her doctor on April 5, 2011 and would let the employer know what the doctor said. The employer did not

hear from the claimant again until April 18, 2011 and could only assume the claimant had voluntarily quit.

The claimant testified that she did not go to her medical appointment until April 7, 2011 and her physician would not release her to return to work at that time. She did not contact the employer prior to that date, on that date or after until April 18, 2011 when her physician released her to return to work. The employer would have simply extended the claimant's medical leave had she contacted the employer to explain that she had not yet been released but she admitted she did not do so and could not offer any explanation as to why not.

The claimant filed a claim for unemployment insurance benefits effective April 17, 2011 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 from April 5, 2011 through April 15, 2011. 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 may not have wanted to quit her employment but her objective actions demonstrated otherwise.

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 May 11, 2011, 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/css