

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA HARVEY

Claimant

APPEAL NO: 12A-UI-09501-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 07-15-12

Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Leaving

Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 6, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 29, 2012. The claimant participated in the hearing. Michael Payne, unemployment specialist, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general laborer for Advance Services last assigned to Palmer Candy from August 8, 2011 to August 15, 2011. She called the employer and the client August 13, 2011, and explained her brother was in the hospital and was dying so she could not work that day. She also called in August 14 and 15, 2012, and provided the same explanation for her absences. The employer received an email from her supervisor August 15, 2012, stating the claimant quit because her brother was dying. The assignment was scheduled to last at least nine months. The claimant was not available to work the following three weeks because her brother passed away August 16, 2011, and she helped her niece through his death.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

871 IAC 24.25(20) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2. The claimant was unable to work for approximately three weeks due to the illness and death of her brother. The employer had continuing work available during this time period. While the claimant had good personal reasons for leaving her assignment, her absence exceeded ten working days and, consequently, must be considered a voluntary leaving without good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits must be denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The August 6, 2012, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw