

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA M NUTE**  
Claimant

**APPEAL NO. 13A-UI-13848-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LA LEASING INC**  
Employer

**OC: 11/17/13**  
**Claimant: Respondent (2)**

Section 96.5-1 - Voluntary Quit  
Section 96.3-7 - Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated December 11, 2013, reference 02, that concluded the claimant had completed a temporary work assignment. A telephone hearing was held on January 13, 2014. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Maria Mays participated in the hearing on behalf of the employer with a witness, James Cole.

**ISSUES:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant has worked for the employer since April 2009. The claimant worked full time on an assignment as a fabricator at Rock 10 from June 10, 2013, to October 24, 2013. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were considered to have voluntarily quit after three day of absence without notice to the employer.

The claimant was absent from scheduled work without notice to the employer on October 25 and from October 28 through 31.

The claimant filed for and received a total of \$136 in unemployment insurance benefits for the weeks between November 17 and November 30, 2013.

The employer protested the claim on December 3, 2013. On the fax cover sheet, the employer's unemployment benefits administrator, Colleen McGuinty, wrote "As of 03/07/2011 due to the high volume of fact findings we will be participating in fact findings via written statement. We will be sending a written statement with all the pertinent information that you will need from us. If

necessary, please contact Colleen McGuinty x4132 or Maria Mays x4117 for rebuttal. On the protest, McGuinty checked "Quit without good cause attributable to the employer" and wrote "3 days no call, no show. Just stopped showing up." She also submitted a separation request form stating the claimant's first day of employment, her dates of employment on her last assignment, her job title and rate of pay. The reason for separation was listed as voluntary quit without sufficient reason and the explanation was stated as "Voluntary quit – Just stopped showing up for work, 3 day no call/no show." During the fact-finding interview on December 10, 2013, the employer was not contacted based on the information on the fax cover sheet.

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

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The unemployment insurance rules state that a claimant absent for three days without giving notice to employer in violation of company rule is presumed to have quit employment without good cause attributable to the employer. 871 IAC 24.25(4). In this case, the claimant was absent five days in a row without any notice to the employer. Based on the employer's policy, she was considered to have voluntarily quit employment.

The unemployment insurance law generally requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. But a claimant is not required to repay an overpayment when an initial decision to award benefits on an employment-separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. She, therefore, was overpaid \$136 in benefits.

The definition of participation is found in administrative rule 871 IAC 24.10:

"Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit.

I conclude that the written material provided by the employer with its protest meets the standard for participation in 871 IAC 24.10. It provided dates and the three days of absence without notice, which if un rebutted would be enough to result in a decision favorable to the employer. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer's account will not be charged for benefits.

**DECISION:**

The unemployment insurance decision dated December 11, 2013, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$136 in unemployment insurance benefits, which must be repaid.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs