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

EDITA HUSIC
Claimant

APPEAL NO. 09A-UI-14897-JTT

ADMINISTRATIVE LAW JUDGE DECISION

SEARS ROEBUCK & CO
Employer

OC: 08/30/09
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 25, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 3, 2009. The claimant did not respond to the hearing notice instructions to provide the telephone number for the hearing and did not participate. Bridget Clark, Human Resources Manager, represented the employer and presented additional testimony through Aaron Jones, Team Manager. Exhibits One through Eighteen were received into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Edita Husic was employed by Sears Roebuck & Co. as a full-time sales service agent from June 1, 2009 and last appeared and performed work on August 26, 2009. Ms. Husic's immediate supervisor was Aaron Jones, Team Manager. On August 26, Mr. Jones met with Ms. Husic to discuss problems with her attendance. Mr. Jones notified Ms. Husic that he was putting her on a performance plan for attendance, that she would need to improve for attendance, and that she would be allowed to continue in the employment, provided she improved her attendance. Ms. Husic was next scheduled to work on August 27 and August 29, but failed to appear for her shifts or notify the employer of her need to be absent from the shifts. The employer's written policy required that the claimant notify her supervisor within one hour of the scheduled start of her shift if she needed to be absent. Ms. Husic was aware of the policy. Ms. Husic abandoned her employment after the August 26 shift and never returned to the employment or make further contact with the employer. On August 31, Mr. Jones processed separation documentation.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure

to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When a person voluntarily leaves employment in response to a reprimand, the person is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(28).

The weight of the evidence indicates that Ms. Husic voluntarily quit the employment in response to a reprimand and was not discharged from the employment. The employer continued to have work available for Ms. Husic.

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.

Ms. Husic voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Husic is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Ms. Husic.

Iowa Code section 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 section 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 would 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 Agency representatives September 25, 2009, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The

claimant is disqualified for benefits until 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 employer's account shall not be charged.

This matter is remanded 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/css