

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL L CARTER
Claimant

APPEAL NO. 10A-UI-05876-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

**Original Claim: 03/07/10
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Stream International, Inc. filed a timely appeal from a representative's decision dated April 7, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits based upon her separation from Stream International, Inc. After due notice was issued, a telephone hearing was held on June 8, 2010. The claimant participated personally. The employer participated by Ms. Stacy Albert, Mr. Scott Putney, and Mr. Josh Reinders.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Carol Carter was employed as a full-time customer service provider for Stream International from July 27, 2009, until January 19, 2010, when she quit employment by failing to return to work for three consecutive workdays and not providing notification to the employer.

Ms. Carter began an approved 45-day personal leave of absence effective December 1, 2009. The claimant had injured her ankle at home and had requested the personal leave of absence. The employer had backdated a number of days of absence to December 1, 2009, for the claimant's benefit. Subsequently, the claimant was reminded by both Mr. Putney and Mr. Reinders that she was expected to return to work on January 15, 2010, and the claimant agreed to do so.

When the claimant did not report to work as agreed at the conclusion of her approved leave of absence on January 15, 2010, Mr. Putney, the claimant's supervisor, left the claimant a message on her voice mail about the employer's expectation that the claimant would return as agreed. The claimant did not respond to Mr. Putney's message or otherwise contact the employer. After the claimant had failed to return to work or provide any additional notification to the employer for three or more consecutive workdays, the employer reasonably concluded that Ms. Carter had chosen to voluntarily leave her employment with the company.

On January 19, 2010, four days after her expected return date, Ms. Carter contacted Mr. Reinders and at that time indicated that her doctor had approved her return for January 22, 2010. This information had not been previously provided to the employer, although the parties had numerous conversations. Ms. Carter was reluctant to return to work on January 15, 2010, because of snow, but did not inform her employer of her impending absence that day or thereafter as required by company policy.

REASONING AND CONCLUSIONS OF LAW:

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

871 IAC 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The evidence in the record shows that the claimant requested, and the employer approved, a personal leave of absence with a begin date of December 1, 2009. The evidence in the record shows that Ms. Carter had repeated conversations with both Mr. Putney and Mr. Reinders and had agreed to return on January 15, 2010, the end of her 45-day approved personal leave of absence. When the claimant did not report or provide any notification as required by company policy for three or more consecutive workdays, the employer reasonably concluded the claimant quit employment. The claimant had no further contact with her employer until January 19, 2010, four days after the expected return date that she had agreed to.

The claimant has received unemployment benefits to which she is not entitled.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay the unemployment benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated April 7, 2010, reference 01, is reversed. Carol Carter is disqualified and benefits are withheld until she has worked in and earned wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw