

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNNETTA M DANIEL

Claimant

APPEAL NO. 16A-UI-05935-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COGNIZANT TECHNOLOGY SOLUTIONS

Employer

OC: 05/01/16

Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 18, 2016, reference 01, decision that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant was discharged on February 29, 2016 for no disqualifying reason. After due notice was issued, a hearing was held on June 14, 2016. Claimant Lynnetta Daniel participated. Jason Paterson represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

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

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lynnetta Daniel was employed by Cognizant Technology Solutions as a full-time Senior Process Executive from November 2015 and last performed work for the employer on February 3, 2016. Ms. Daniel's immediate supervisor was Team Leader Nicolas Shoman. Ms. Daniel's duties involved handling inbound insurance inquiries. Ms. Daniel's work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday.

On February 3, 2016, Ms. Daniel left before the scheduled end of her shift without telling anyone. Ms. Daniel left because she was not feeling dizzy and light-headed. Ms. Daniel suffers from high blood pressure, anxiety and depression. Ms. Daniel was scheduled to participate in training that day and left during a break in the training. Ms. Daniel had her son pick her up at work and transport her to the Emergency Room at Broadlawns Medical Center. At Broadlawns, Ms. Daniel's blood pressure tested high. Ms. Daniel was admitted to the hospital and was hospitalized in the psychiatric unit. Ms. Daniel was required to surrender her cell phone. Before she surrendered her cell phone, she attempted to call Mr. Shoman. Mr. Shoman did not answer and Mr. Showman's line did not provide the opportunity to leave a voice mail message. Ms. Daniel remained in the hospital until February 9, 2016. Ms. Daniel got her phone back at that time. Ms. Daniel did not attempt to return to the employment and did not make contact with the employer. A doctor did not advise Ms. Daniel to leave the employment. The employer waited until February 29, 2016, to document Ms. Daniel as a voluntary quit.

Ms. Daniel established a claim for benefits that effective May 1, 2016. Ms. Daniel's base period for purposes of that claim consists of the four quarters of 2015. Cognizant is a base-period employer. Ms. Daniel has received \$2,811.00 in benefits for the period of May 1, 2016 through July 2, 2016.

On May 17, 2016, a Workforce Development claims deputy held a fact-finding interview to address Ms. Daniel's separation from the employment. The employer did not have anyone participate in the fact-finding interview. The employer's participation was limited to a cursory statement in the protest materials and a one-line email message. Ms. Daniel did not engage in any fraud or intentional misrepresentation at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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.

The evidence in the record established a voluntary quit without good cause attributable to the employer. The evidence indicates that that Ms. Daniel left early on February 3, 2016 due to illness. Ms. Daniel had the ability to notify someone of her need to leave early, but elected not to provide such notice. Ms. Daniel attempted to call the employer as she was being hospitalized on February 3, 2016, but did not make contact with the employer. Ms. Daniel remained without the means to contact the employer until she was released from the hospital on February 9, 2016. Ms. Daniel elected not to make further contact and not to return to the employer. That decision was not based on advice from a doctor.

Because Ms. Daniel voluntarily quit the employment without good cause attributable to the employer, she 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 unemployment insurance law 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. However, a claimant will not have 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.

Iowa Administrative Code rule 817-24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.
24.10(1) "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. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The claimant received benefits, but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$2,811.00 in benefits for the period of May 1, 2016 through July 2, 2016. Because the claimant did not receive benefits due to fraud or willful misrepresentation and because employer failed to participate in the finding interview, the claimant is not required to repay the overpayment. The employer remains subject to charge for the overpaid benefits. However, the employer's account is relieved of liability for benefits paid to the claimant for the period on or after the mailing date of this decision.

DECISION:

The May 18, 2016, 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 a been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid \$2,811.00 in benefits for the period of May 1, 2016 through July 2, 2016. The claimant is not required to repay the overpayment. The employer remains subject to charge for the overpaid benefits. However, the employer's account is relieved of liability for benefits paid to the claimant for the period on or after the mailing date of this decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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