

part-time cashier. The claimant requested and was granted Family Medical Leave (FMLA) from January 22 through March 1, 2005.

On March 1, 2005, the employer contacted the claimant. The claimant requested additional leave. The employer requested documentation from the claimant's physician in order to extend the leave. The claimant said she would provide the paperwork. The employer repeatedly contacted the claimant requesting the documentation and informing the claimant the leave would not be extended without the proper paperwork from the physician. The claimant did not comply. On April 5, 2005, the employer asked the claimant for permission to speak with the physician. The claimant granted the employer permission and the employer contacted the physician on April 7, 2005.

On or about April 5, 2005, the physician told the employer the claimant had been released to return to work and the physician would not extend the leave. The employer ended the claimant's employment on April 7, 2005, for failure to return to work or provide documentation for an extended leave.

After the claimant's separation from employment she was hospitalized for three days in June, one week in July, and one day in August 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

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 24.23(10) provides:

- (10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer that she could not work work. When an employee stops work because of a leave of absence, her leaving is without good cause attributable to the employer. The claimant left work to take a leave of absence and then did not return when released to do so by her physician. The claimant's refusal to return to work after the expiration of her leave constitutes a voluntary quit. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received benefits in the amount of \$774.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

The issue of the claimant's availability for work after her separation should be remanded for consideration.

DECISION:

The representative's July 21, 2005 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are denied. The claimant is overpaid benefits in the amount of \$774.00. The issue of the claimant's availability for work after her separation is remanded for consideration.

bas/kjw