

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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OTTUMWA IA 52501

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Appeal Number: 04A-UI-08710-LT
OC: 07-11-04 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Leaving
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from the August 2, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 2, 2004. Claimant did participate and was represented by Sarah Wenke, Attorney at Law. Employer did participate through Fred Metcalf and Brenda Wilson.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time housekeeping assistant through July 6, 2004 when she quit. She was a no-call/no-show on July 3, 4 and 5, 2004. She was on the schedule for those days made two weeks in advance. On June 28, 29, 30 and July 1, claimant called in her absences related

to illness. On July 2, claimant did not report so employer called her and found out that she did qualify for FMLA and advised her about how that process worked (pick up papers, take to her physician and return them to employer within 15 days). She said she did not have money to go to a physician and, thus, could not accept FMLA. She said she would return the next three days that she was scheduled on July 3, 4 or 5, 2004. Employer left message on claimant's phone on July 3 after she did not report for work and told her she was not on FMLA, she was expected at work and needed to call back. Claimant did not do so. Employer offers health insurance but it is a separate transaction between the employee and insurance company so employer does not know if she has coverage. Claimant did not have health insurance or Title IXX and did not know how to get help but did not ask either. Claimant assumed she was on FMLA and did not need to call in.

The claimant has received unemployment benefits since filing a claim with an effective date of July 11, 2004.

REASONING AND CONCLUSIONS OF LAW:

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

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 24.25(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 claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2 (amended 1998).

Claimant was specifically advised that in order to be eligible for FMLA that she must provide medical information to employer. Claimant acknowledged that she would not go to the doctor so she would decline FMLA coverage for her absences. In addition to failing to seek financial assistance to see a doctor and provide the information for FMLA eligibility, claimant failed to continue to report her absences to employer or report to work. The unreported absences are

considered unexcused and the accumulation, after specific conversations with employer, was misconduct. 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The August 2, 2004, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as 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 claimant is overpaid benefits in the amount of \$1,504.00.

dml/tjc