

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALISON G STOTT**  
Claimant

**APPEAL NO. 06A-UI-11387-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FBG SERVICE CORPORATION**  
Employer

**OC: 10/29/06 R: 02  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

FBG Service Corporation (employer) appealed a representative's November 16, 2006 decision (reference 02) that concluded Alison G. Stott (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 13, 2006. The claimant responded to the hearing notice but was not available for the hearing. Mike Sloan, a representative with TALX, appeared on the employer's behalf. Chuck Moehring and Larry Karlovsky testified on the employer's behalf.

At 11:35 a.m., the claimant contacted the Appeals Section in response to the message left on her answering machine at 9:00 a.m. The claimant made a request to reopen the hearing. Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is there good cause to reopen the hearing?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 4, 2004. The claimant worked as a full-time cleaning specialist. Moehring had been the claimant's supervisor for the last five days of her employment.

In August 2005, the claimant had some medical issues and received a medical leave of absence under the Family Medical Leave Act. The claimant on medical leave for about a month. On August 22, 2006, the claimant received permission to leave work early. A short time later the employer received a doctor's note indicating the claimant could not return to work until August 28, but was then released to work without any work restrictions.

In an August 25 e-mail to Karlovsky, the claimant's former supervisor, she told the employer she was unable to work because of a medical condition. The claimant also wrote that she was resigning her job effective immediately. The claimant did not contact the employer again.

The claimant's job was not in jeopardy prior to August 22. There was continuing work available for her to do. If the claimant had submitted the proper documentation, the employer could have granted the claimant a medical leave of absence. The claimant did not ask for FMLA.

The claimant established a claim for unemployment insurance benefits during the week of October 29, 2006. The claimant filed claims for the weeks ending November 4 through December 2, 2006. The claimant received \$127.00 in benefits for each of these weeks.

The claimant responded to the hearing notice prior to the scheduled December 13 hearing. When the claimant was called for the scheduled 9:00 a.m. hearing, she was sleeping and did not answer her telephone. At 11:35 a.m. the claimant responded to the message left on her answering machine and called the Appeals Section. The claimant asked that the hearing be reopened. The claimant was not available for the hearing because she incorrectly wrote down the date of the hearing as December 14 instead of December 13. The claimant asserted that as a result of her medical condition she sometimes fails to write down the correct information.

#### **REASONING AND CONCLUSIONS OF LAW:**

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

Even though the claimant asserted she was not available for the hearing because of her medical condition, this is common reason a party misses or is not available for a hearing. Unfortunately, writing down the date of hearing incorrectly or not being available for a hearing because a person is sleeping is an understandable reason for missing a scheduled hearing. This reason does not, however, establish good cause to reopen a hearing. The claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code § 96.6-2. The claimant quit her employment on August 25, 2006. The facts do not establish that the claimant quit for reasons that qualify her to receive unemployment insurance benefits. 871 IAC 24.26(6). Therefore, as of October 29, 2006, the claimant is not qualified to received to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the

overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending November 4 through December 2, 2006. The claimant has been overpaid \$635.00 in benefits she received for these weeks.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's November 16, 2006 decision (reference 02) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of October 29, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending November 4 through December 2, 2006. The claimant has been overpaid and must repay a total of \$635.00 in benefits she received for these weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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