

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA BRAAFHART
Claimant

APPEAL NO: 08A-UI-05905-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA ORTHOPAEDIC CENTER PC
Employer

OC: 05/18/08 R: 02
Claimant: Respondent (2)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.25(4) - Voluntary Quit Without Good Cause
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Iowa Orthopaedic Center PC (employer) appealed an unemployment insurance decision dated June 18, 2008, reference 01, which held that Lisa Braafhart (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 18, 2008. The claimant participated in the hearing. The employer participated through Amanda Broman, Human Resources Generalist and Marianne Monday-Edsill, Supervisor. Employer's Exhibits One and Two were admitted into evidence. Based on 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.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked at the employer's facility as a clerical temporary worker beginning in August 2007. She had a problem with attendance at that time and was verbally coached prior to being hired full-time by the employer on December 26, 2007. The employer's attendance policy requires employees to call in prior to their shift if they are going to be absent and it is mandatory the employee speak with their supervisor or someone in human resources. It is not acceptable to leave a message on the answering machine. The employer's attendance policy also provides that an employee is considered a voluntary quit if she is a no-call/no-show for three consecutive workdays.

The claimant's first written warning for attendance was issued on February 7, 2008 and a second written warning was issued on May 6, 2008. She went home early on May 6, 2008 because her daughter knocked her permanent teeth loose at school when she ran into another

child. The claimant left a message on May 7, 2008 indicating that she would be late as she had to take her daughter to the dentist. She never reported to work and never called the employer that afternoon. Her supervisor called her later that day and asked about the claimant's daughter. The claimant said her daughter had been given a release to return to school by the dentist and she would bring a copy of it to the employer. The claimant again left a message on May 8, 2008 indicating that she would not be at work as her daughter's lip was still swollen and she was not eating. She left another recorded message for her absence on Friday, May 9, 2008. The claimant said her daughter was still not eating anything more than soft foods and now she was not feeling well also.

The claimant called in and left another voice mail message announcing her absence on May 12, 2008. The next day she left a message stating that she would be at work around noon after she had a meeting at the school for her other child. The claimant did not report to work or call the employer again that afternoon. She was a no-call/no-show on May 14 and May 15, 2008. The employer sent her a termination letter advising her she was terminated due to job abandonment after three no-call/no-shows.

The claimant filed a claim for unemployment insurance benefits effective May 18, 2008 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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. 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 demonstrated her intent to quit and acted to carry it out through her failure to properly report her absences and her job abandonment.

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 § 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 § 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 was deemed a voluntary quit on May 15, 2008 after three days of no-call/no-show. It is her burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

Iowa Code § 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 unemployment insurance decision dated June 18, 2008, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has 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 \$1,356.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs