

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GINA L HAUGHNEY
Claimant

APPEAL NO. 12A-UI-04353-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 02/19/12
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 6, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 10, 2012. Claimant Gina Haughney did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Turkessa Newsome, Human Resources Generalist, represented the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gina Haughney was employed by APAC Customer Services of Iowa as a full-time Team Lead. The employment began in 2008. Ms. Haughney last performed work for the employer on September 29, 2011. Ms. Haughney's immediate supervisor was Marcie Ordaz, Operations Manager. At that time Ms. Haughney last performed work for the employer, the employer was aware that Ms. Haughney was dealing with a cancer diagnosis. The employer had previously approved Ms. Haughney for intermittent leave under the Family and Medical Leave Act (FMLA). There had been days or a week at a time when Ms. Haughney did not perform work for the employer due to illness. The employer had adjusted Ms. Haughney's work responsibilities so that Ms. Haughney could work only when she felt well enough to work. The employer was motivated to continue the employment.

After Ms. Haughney performed work for the employer on September 29, 2011, she did not make further contact with the employer until February 1, 2012 when she contacted the employer's Workplace Platform and then contacted Turkessa Newsome, Human Resources Generalist. Ms. Haughney's previously approved *intermittent* FMLA leave had expired on November 2, 2011. In November 2011, Ms. Ordaz had made several attempts to contact Ms. Haughney without success. Ms. Newsome had made monthly attempts to reach Ms. Haughney. In January 2012, after not hearing from Ms. Haughney since September 29, 2011, the employer

concluded the employment was done. On February 1, 2012, Ms. Newsome told Ms. Haughney about the employer's attempts to contact her and about the employer's decision in January to deem the employment done. Ms. Haughney indicated that she had been in the hospital at some point and indicated she had not received a message from the employer.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence in the record indicates that the employer reasonably concluded, in January 2012, that Ms. Haughney had voluntarily quit the employment, after Ms. Haughney had been out of contact with the employer since September 29, 2011 and had continued to be well out of contact with the employer after her *intermittent* FMLA had expired.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

The weight of the evidence indicates that Ms. Haughney voluntarily quit the employment, effective September 29, 2012, due to a non-work-related medical condition. The evidence fails to indicate that the separation was based on the advice of a licensed and practicing physician. See 817 IAC 24.26(6)(a). The administrative law judge concludes that Ms. Haughney voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Haughney 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 employer's account shall not be charged for benefits paid to Ms. Haughney.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's April 6, 2012, 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 and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the

benefits. The remand should also address whether the claimant has been able to work and available for work since establishing her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css