

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA A LACY

Claimant

APPEAL NO: 09A-UI-14699-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERSTATE MANAGEMENT CO LLC

Employer

OC: 08/23/09

Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Interstate Management Company, L.L.C. (employer) appealed a representative's September 21, 2009 decision (reference 01) that concluded Sara A. Lacy (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 29, 2009. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Angie Baker appeared on the employer's behalf and presented testimony from one other witness, Monica Abair. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on September 5, 2008. She worked full time as an assistant head housekeeper in the employer's Cedar Rapids, Iowa hotel. Her last day of work was July 30, 2009.

The claimant was scheduled for work at 9:00 a.m. on July 31; however, she was a no-call/no-show for work that day, as well as for all of her scheduled workdays thereafter. The employer attempted to reach her by phone on July 31, but the claimant did not return the call. On August 7 she spoke to a front desk clerk to inquire if there was a paycheck waiting for her. She was informed there was, but that she would need to turn in her cleaning smock. She came in later and picked up her check and turned in her smock. She did not seek to speak to either Ms. Baker, the general manager, or Ms. Abair, the head housekeeper. Neither of them were aware of any problems that would have affected the claimant's decision not to return to work. The claimant's job was not in any jeopardy, and continued work was available for her as of July 31 and several days thereafter had she returned to work.

The claimant established a claim for unemployment insurance benefits effective August 23, 2009. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

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 and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded to the Claims Section.

DECISION:

The representative's September 21, 2009 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of July 31, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise

eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css