

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NYOKA L SMITH
Claimant

APPEAL NO. 10A-UI-01483-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACT INC
Employer

**Original Claim: 06/14/09
Claimant: Appellant (4/R)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(40) – Quit Prior to an Announced Layoff

STATEMENT OF THE CASE:

The claimant appealed a representative's January 22, 2010 decision (reference 04) that concluded she was not qualified to receive benefits as of December 17, and the employer's account was exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. A telephone hearing was held on March 9, 2010. The claimant participated in the hearing. Deb Schreiber, a manager, appeared on the employer's behalf. 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:

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

FINDINGS OF FACT:

The claimant started working for the employer as a contingent, or on-call, employee in November 2008. At various times, the employer has work or projects that need to be done and contacts the contingent employees, such as the claimant, to work. The claimant works until the project is done. She is then laid off until the employer has another project to complete.

The employer asked the claimant return to work in September 2009. The claimant understood she would be working until sometime in December on this project. The claimant's supervisor initially told employees the project would be completed and they would be laid off on December 18. The claimant's supervisor later told the claimant and others their last day of work on the project would be December 23, 2009.

The claimant received a call that her daughter was in a hospital in Illinois. The claimant went to her daughter and learned there were some problems she needed to help her daughter work through. Instead of going back to work, the claimant decided to stay with her daughter through the holidays. The claimant's last day of work for the employer was December 17, 2009.

The claimant contacted the employer to report she was unable to work on December 18 and would not be back at work. The claimant did not return to Iowa until after the holidays.

The claimant did not contact the employer immediately when she returned to Iowa, because she knew this was slow time and there was not much if any work. The claimant did not know the majority of employees in her area worked until January 8, 2010, at which time they were laid off from work.

The claimant reopened her claim the week of December 13, 2009. She has filed claims and received benefits since December 20, 2009.

REASONING AND CONCLUSIONS OF LAW:

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 voluntarily quits in advance of an announced scheduled layoff, the claimant will not be eligible for benefits from the last day worked to the date of the scheduled layoff. 871 IAC 24.25(40).

Even though the employer's paperwork indicated the claimant voluntarily quit, the claimant's testimony that she and her co-workers had been told initially they would be laid off on December 18, and then on December 23, is credible. Since the claimant was not at work after December 17, it is very likely the layoff date was delayed to January 8, 2010. When the claimant called on December 18 to report she would not be at work, she reasonably believed she would be laid off on December 23. The claimant voluntarily quit in advance of an announced layoff. Therefore, she not eligible to receive benefits December 18, 2009, through January 9, 2010, because while she had personal reasons for quitting, these reasons do not qualify her to receive benefits. As of January 10, 2010, the claimant is qualified to receive benefits, since she would have been laid off as of January 8, 2010.

Since the claimant filed for and received benefits since December 20, an issue of overpayment is remanded to the Claims Section to determine.

DECISION:

The representative's January 22, 2010 decision (reference 04) is modified in the claimant's favor. The claimant quit, but she quit prior to an announced layoff. Therefore, as of January 10, 2010, the claimant is qualified to receive benefits. From December 18, 2009, through January 9, 2010, the claimant is not eligible to receive benefits. An issue of overpayment of benefits the claimant received December 18, 2009, through January 9, 2010, is Remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed