

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BROOKE W KROEGER

Claimant

APPEAL NO. 12A-UI-13444-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC

Employer

OC: 09/23/12

Claimant: Respondent (2-R)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 30, 2012, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on December 11, 2012. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Steve Brown participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a telephone sales representative for the employer from February 23, 2012, to September 24, 2012.

She filed a complaint with the employer alleging another employee had sexually harassed her on September 24. The claimant voluntarily absented herself from work after making the complaint by not reporting to work. The employer offered the claimant an alternative job that would not have involved interacting with the employee she complained about.

The claimant filed a claim for unemployment insurance benefits effective September 23, 2012, while she was voluntarily absent from work. She indicated when she filed her claim that she had quit employment even though she had not informed anyone that she was quitting and the employer considered her still employed. The employer followed its policy in investigating the claimant's allegations but received little cooperation from either party to proper resolve the matter.

The claimant returned to work on October 22, and worked for about three hours before leaving work due to mouth pain. She was off work again from October 23 to November 11 on medical leave due to dental problems and surgery. She returned to work again on November 12.

The claimant filed weekly claims for unemployment insurance benefits during the nine weeks between September 23 and November 24, 2012. She received \$532.00 in benefits for the weeks between September 23 and November 10.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The case is troubling because the claimant filed a claim for unemployment insurance benefits indicating she had quit her employment, but the evidence establishes that the claimant never informed anyone in management she was quitting and the employer had work for her and considered her as an employee all throughout the time that she was off work. Since the claimant did not participate in the hearing, some questions are unanswered.

Since the claimant filed for unemployment insurance benefits and indicated she quit when she applied, it suggested at least at the time she applied, she intended to quit. Perhaps she changed her mind later but the preponderance of the evidence shows the separation as of September 23 was a voluntary quit. The claimant has the burden to show she had good cause to quit. In order for the claimant to have quit with good cause attributable to the employer, the evidence would have to show that the claimant was sexually harassed by a coworker, the employer was notified, and the employer did not properly act to correct the situation. Based on the evidence presented at the hearing, there is no credible proof of harassment and the employer was acting properly to investigate the allegations to take proper action.

Even if the separation is viewed as a leave of absence during the time periods the claimant was off work, the law would deny benefits to the claimant because a leave of absence is deemed a period of voluntary unemployment for the employee and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)j.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated October 30, 2012, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css