

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBIN L FINGALSEN**  
Claimant

**APPEAL NO. 10A-UI-08288-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACC ENTERPRISES LLC**  
Employer

**OC: 05/09/10**  
**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated June 9, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on July 27, 2010. Although duly notified the claimant did not participate. The employer participated by Mr. Michael Blume, Administrator and Ms. Darla Spratt, Director of Nursing.

**ISSUE:**

At issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds: Robin Fingalsen was employed as a part-time certified nursing assistant for Cedar Health from December 17, 2009 until April 23, 2010 when she quit her job by failing to report for scheduled employment.

On or about April 21, 2010 Ms. Fingalsen called the employer to determine whether she was scheduled to work on Friday, April 23, 2010. The facility's director of nursing, Ms. Spratt informed Ms. Fingalsen that she was scheduled to work that day and a weekend shift as well as the claimant had previously called off work the preceding weekend. Under company rules an employee who calls off on a weekend or holiday is required to work the next scheduled weekend or holiday. During the conversation Ms. Fingalsen hung up on the director of nursing. The claimant did not report for scheduled work on April 23, 2010 or thereafter and provided no additional notification to the employer. After the claimant had failed to report for scheduled work for three or more consecutive work shifts and had not provided any notification the employer reasonably concluded that the claimant had voluntarily quit employment.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant left employment without good cause attributable to the employer.

Iowa Code section 96.5-1 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.

The evidence in the record establishes that the claimant was personally aware that she was required to work Friday, April 23, 2010. During the conversation about the claimant's scheduled shifts Ms. Fingalsen hung up on the facility's director of nursing. The claimant did not report for scheduled work for the April 23, 2010 date or for scheduled shifts thereafter leading the employer to the reasonable conclusion that the claimant had voluntarily left employment. Prior to leaving the claimant had expressed no dissatisfaction to the employer nor had the claimant requested any accommodation. The administrative law judge thus concludes that the claimant voluntarily quit employment without good cause attributable to the employer. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated June 9, 2010, reference 01, is reversed. The claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, providing that she meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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