

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA A LUMLEY
Claimant

APPEAL NO: 06A-UI-08618-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMANA NORDSTROM INC
Employer

**OC: 07/23/06 R: 03
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Amana, filed an appeal from a decision dated August 18, 2006, reference 01. The decision allowed benefits to the claimant, Rebecca Lumley. After due notice was issued, a hearing was held by telephone conference call on September 13, 2006. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by General Manager Rich Lehnardt.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Rebecca Lumley was employed by Amana from February 20 until July 19, 2006. She was a part-time housekeeper. At the time of hire she received a copy of the employee handbook which set out the policies for properly reporting any absences not approved in advance. The policy further informs employees they will be considered a voluntary quit for “job abandonment,” being no-call/no-show for scheduled shifts.

The claimant’s last day of work was July 12, 2006. She was scheduled after that on July 13, 15, 18 and 19, 2006. Ms. Lumley called in absent on July 13, 2006, and had someone bring in a doctor’s statement later that day excusing the absence and returning her to work on July 14, 2006. However, the claimant was no-call/no-show after July 13, 2006, and the employer considered her a voluntary quit as of the third missed shift on July 19, 2006.

Rebecca Lumley has received unemployment benefits since filing a claim with an effective date of July 23, 2006.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was no-call/no-show to work for three scheduled shifts. The doctor's statement she provided excused her for only July 13 with a return to work effective July 14, 2006. Her other absences were neither properly reported or excused. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 18, 2006, reference 01, is reversed. Rebecca Lumley is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,127.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/cs