

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**JUSTINE N LINK**  
Claimant

**APPEAL NO. 22A-UI-20100-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREAT RIVER MEDICAL CENTER HR**  
Employer

**OC: 11/27/22  
Claimant: Respondent (2R)**

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Iowa Code Section 96.5(1)(d) – Voluntary Quit Due to Non-work Related Medical Condition  
Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

On December 28, 2022, the employer filed a timely appeal from the December 20, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged on December 1, 2022 for no disqualifying reason. After due notice was issued, a hearing was held January 20, 2023. Justine Link (claimant) participated. Todd Morehead represented the employer. Exhibits 1, 2, 3 and A were into evidence. Exhibit 1 is the online appeal. Exhibit 2 is the Advanced Practitioner Employment Agreement. Exhibit 3 is the Termination of Employment. Exhibit A is the medical memo from P.A. Keenan. The administrative law judge took official notice of the following Agency administrative records: DBRO and KFFV. The administrative law judge took official notice of the fact-finding materials for the purpose of documenting the employer's participation in the fact-finding interview.

**ISSUES:**

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.  
Whether the claimant was overpaid benefits.  
Whether the claimant must repay overpaid benefits.  
Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:  
Justine Link (claimant) began her employment with Great River Medical Center in 2018 as a Registered Nurse. In January 2019, Ms. Link commenced working for Great River Medical Center as a part-time Nurse Practitioner in the employer's Mental Health Department. Ms. Link continued in the same position and duties until she last performed work for the employer on August 22, 2022. The claimant's duties involved assisting outpatient patients with diagnosis, treatment planning, medication management, and brief counseling associated with medication management. The claimant's regular work hours were 8:00 a.m. to 4:30 p.m., Monday,

Tuesday, Wednesday, and Friday. Amana Tinkhan, Clinic Manager, was the claimant's supervisor.

After the claimant worked on August 22, 2022, she began an approved leave of absence pursuant to the Family and Medical Leave Act (FMLA). The claimant's leave of absence was necessitated by severe depression. At the time the employer approved the initial leave period, the employer documented an October 4, 2022 anticipated return-to-work date.

The claimant did not return to work by October 4, 2022. The employer extended the approved leave of absence by three weeks and documented an October 25, 2022 return to work date.

Due to the nature and severity of the claimant's mental health issue and treatment, the employer's approval of the initial leave period and extension of the leave period to October 25, 2022 occurred without the claimant's direct involvement.

Prior to commencing the leave of absence, the claimant initiated outpatient treatment with a psychiatrist. The claimant has not reviewed the FMLA Health Care Provider Certification of Serious Health Condition submitted in connection with the initial FMLA leave approval, but doubts her psychiatrist would have provided an anticipated return-to-work date in that document. Due to the mental health issue, the claimant was hospitalized on August 23, 2022. Once a brief hospitalization, the claimant was discharged to a residential treatment facility. The claimant remained in the residential treatment facility until she was discharged to home and family monitoring on or about October 31, 2022. During the period of residential treatment, the claimant did not have access to her phone or her mail.

The employer did not approve an extension of the leave beyond October 25, 2022. By this time, the claimant had exhausted available leave under the Family and Medical Leave Act.

During the first few days of November 2022, the claimant was admitted for inpatient psychiatric services at the University of Iowa Hospitals and Clinics (UIHC). The claimant remained hospitalized for five days and commenced electroconvulsive treatment (ECT) during the hospitalization. Upon discharge from the hospital, the claimant continued an ECT regimen that included three ECT treatments three times per week on Monday, Wednesday and Friday. The thrice weekly ECT treatments continued to November 20, 2022, at which time the claimant was stepped down to one ECT treatment per week. As of November 21, 2022, the claimant had been away from work due to her ongoing mental health issue for 90 days. The claimant continued in the once-weekly ECT treatment for three weeks, and then was stepped down to one ECT treatment every two weeks. This biweekly ECT regimen was in place at the time the employer contacted the claimant on November 30, 2022 regarding a meeting to occur on December 1, 2022. The claimant had been out of contact with the employer until the employer contacted the claimant on November 30, 2022.

The claimant's most recent employment contract was effective March 21, 2022 through December 31, 2022. Section 4.1.2 of the contract stated as follows:

Article 4

TERMINATION

4.1 Employer shall have the right to terminate this Agreement and upon such notice and for such reasons as follows:

...

4.1.2 Upon the occurrence of physical or mental disability of Provider to such an extent that Provider is unable to carry on a substantial portion of usual and customary duties

with or without reasonable accommodation and such inability continues for a period of ninety (90) continuous days or more. Nothing herein shall limit the right of Employer to terminate this Agreement under one of the other sections of this Article 4. For purposes of this Agreement, disability shall mean the inability of Provider to carry on a substantial portion of usual and customer duties with or without reasonable accommodation as a result of mental or physical illness or injury as determined by an examining provider mutually acceptable to Employer and Provider. If Provider returns to full-time employment following a disability for which Provider has received disability payments hereunder and is again disabled by the same disability for which disability payments were received within twelve months from the date returned to full-time employment, such subsequent disability shall be considered a continuation of the prior disability.

During the period when the claimant was away from work, she understood that she would need to remain off work until her psychiatrist released her to return to work. The claimant had discontinued seeing her psychiatrist for outpatient services while she was in inpatient and residential treatment, but reestablished the relationship once she returned to outpatient status in November 2022. The claimant had an appointment set with her psychiatrist on December 15, 2022. The claimant anticipated her psychiatrist would make a determination at that time regarding whether the claimant would be released to return to work.

When the employer phoned the claimant on November 30, 2022 to summon her to a meeting in the workplace December 1, 2022, the claimant assumed the purpose of meeting was to discuss and facilitate a return to her work duties.

On December 1, 2022, Todd Morehead, Human Resources Generalist, and Russel Rodriguez, Chief Physician Practice Executive met with the claimant for the purpose of formally terminating the employment relationship. In so doing, the employer relied upon the employment contract effective March 21, 2022 through December 31, 2022, specifically section 4.1.2. The employer presented the claimant with a termination letter at the time of December 1, 2022 meeting.

The claimant continued in the biweekly ECT treatment every two weeks regimen as of the January 20, 2023 unemployment insurance appeal hearing date. Devin, Keenan, P.A.-C., of the UIHC Adult Psychiatry department oversaw the ECT therapy. Pursuant to a January 13, 2023 note from P.A. Keenan, the ECT treatments render the claimant unable to work the day of the treatment and the day following the treatment. P.A. Keenan indicates in the note that the claimant "is otherwise cleared to work without restriction. The claimant advises that the document from P.A. Keenan is a release specific to the ECT treatment. The claimant has not provided a medical release from her psychiatrist. The memo from P.A. Keenan states as follows:

Justine N Link is a patient under my care. She continues to receive treatment with our department, but was able to return to work as of 12/1/22. She is unable to work on the day she receives treatment and for 24 hours after her treatment, but is otherwise cleared to work without restriction.

The claimant has never provided a medical release to the employer.

The claimant established an original claim for benefits that Iowa Workforce Development deemed effective November 27, 2022. Iowa Workforce Development set the weekly benefit amount at \$572.00. Great River Medical Center is a base period employer. The claimant has thus far received \$4,576.00 in benefits for eight weeks between November 27, 2022 and January 21, 2023.

On December 21, 2022, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed the claimant's separation from the employment. Todd Morehead represented the employer at the fact-finding interview.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

Iowa Admin. Code r. 871-24.22(2)(j) provides:

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Iowa Code section 96.5(1)(d) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Administrative Code rule 817-24.26(6)(a) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record established the claimant left the employment due to a non-work related illness. The circumstances surrounding the claimant's time off work indicate her departure from the workplace was upon the advice of a licensed and practicing physician. Before the employer contacted the claimant on November 30 and met with the claimant on December 1, 2022, the claimant had been away from the workplace for more than three months, had exhausted available leave, and had not returned at the end of the approved leave of absence. In other words, the separation from the employment occurred before the employer took steps to formalized the separation on December 1, 2022. While the claimant's absence from the employer may not have felt voluntary to the claimant, it was an absence initiated by the claimant, not the employer. The absence was, from the claimant's perspective, for an indefinite period. The claimant never contacted the employer to indicate she was released to return to work, never provided the employer with medical documentation indicating she was released to return to work, and never requested to return to the employment. Under the applicable unemployment insurance law, the claimant's separation from the employer was a voluntarily quit without good cause attributable to the employer. Accordingly, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. Because the

separation was due to a non-work related medical condition, the claimant may also requalify for benefits by satisfying the requirements forth at Iowa Code section 96.5(1)(d), above.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible for benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received benefits, but this decision disqualifies the claimant for those benefits. Accordingly, the benefits the claimant received constitute an overpayment of benefits. The claimant is overpaid \$4,576.00 in benefits for eight weeks between November 27, 2022 and January 21, 2023. Because the employer participated in the fact-finding interview, she is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

**DECISION:**

The December 20, 2022 (reference 01) decision is REVERSED. The claimant voluntarily quit the employment without good cause attributable to the employer due to a non-work related medical condition. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. Because the separation was due to a non-work related medical condition, the claimant may also requalify for benefits by satisfying the requirements set forth at Iowa Code section 96.5(1)(d), above. The claimant is overpaid \$4,576.00 in benefits for eight weeks between November 27, 2022 and January 21, 2023. The claimant is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

**REMAND:**

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for a decision regarding whether the claimant has been able to work and available for work since she established her original claim for benefits.



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James E. Timberland  
Administrative Law Judge

January 31, 2023  
Decision Dated and Mailed

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.