

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TASHA L ALEXANDER
Claimant

APPEAL NO. 07A-UI-09666-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON PREPARED FOODS INC
Employer

**OC: 10/22/06 R: 03
Claimant: Respondent (2)**

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 5, 2007, reference 05, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 30, 2007. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Ron Wood participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a sanitation worker from June 4, 2007, to August 26, 2007. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. The claimant was warned during the week of August 20 about excessive absenteeism. She was informed that if she missed any additional work during her probationary period, she could be discharged.

The claimant was absent from work without notice to the employer on August 27. She called in on August 28 and informed the employer that she would bring in her equipment the next day. When she brought in her equipment on August 29, she completed an exit interview stating that she was leaving employment to return to school. No one in management informed the claimant that she was discharged.

The claimant filed for and received a total of \$882.00 in unemployment insurance benefits for the weeks between September 9 and October 20, 2007.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit 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 claimant may have believed that her absence without notice on August 27 meant she was going to be discharged. No one in management, however, informed the claimant that she was discharged, and at the point that the claimant called and said she would bring in her equipment, the employer had not yet taken any action to separate her from employment. Her separation, therefore, was a voluntary quit without good cause attributable to the employer.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective September 9, 2007, and was overpaid \$882.00 in benefits for the weeks between September 9 and October 20, 2007.

DECISION:

The unemployment insurance decision dated October 5, 2007, reference 05, 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 claimant was overpaid \$882.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs