

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENNA L LYONS
Claimant

APPEAL NO. 16A-UI-08247-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SECURITAS SECURITY SERVICES USA
Employer

OC: 05/08/16
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated July 19, 2016, reference 04, which held claimant eligible to receive unemployment insurance benefits. After notice was given, a telephone hearing was held on August 17, 2016. Although duly notified, the claimant did not participate. The employer participated by Mr. Tom Kuiper, Hearing Representative, and witness, Jim Buser, Area Manager.

ISSUES:

The issues are whether the claimant quit employment with good cause attributable to the employer and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The claimant was employed by Securitas Security Services USA from June 6, 2016, until June 17, 2016 when she voluntarily left work to accept other employment. Ms. Lyons was employed as a full-time security guard and was paid by the hour. Her immediate supervisor was Shelly Hubner.

The claimant was assigned by this employer to work as a security guard at the Converges account. A short time later the client informed her supervisor that she was undergoing training and planning to accept direct employment with Converges.

Ms. Lyons was reminded that employees are prohibited from accepting direct employment with clients by Securitas policy. The claimant elected to quit her employment with Securitas giving notice that her last day of employment would be Monday, June 20, 2016. The employer accepted the claimant's resignation. On June 17, 2016, Ms. Lyons telephoned her employer saying that a family member was hospitalized and that Ms. Lyons would not be returning to work

her scheduled shifts on Saturday, June 18 or Sunday, June 19, 2016. The claimant was aware that she had the option of remaining employed with Securitas Security Services USA, but nevertheless tendered her resignation from employment indicating that it was her choice to continue training with Converges in order to be eligible for new employment with that company.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 aware that she had the option of remaining employed with Securitas Security Services USA, but that she could not accept direct employment with a Securitas client because of Securitas conflict of interest policies. The evidence in the record establishes that Ms. Lyons chose to end her employment with Securitas Security Services USA by quitting, giving advanced notice to her employer that her final day of work would be June 20, 2016. Subsequently, the claimant called the company and indicated that she would not be working the final weekend because of personal issues. Ms. Lyons had indicated that she was in training at Converges for a permanent position with that company and the claimant made a choice to leave her employment at Securitas Security Services USA in anticipation of employment with Converges. After leaving her employment with Securitas Security Services USA effective June 17, 2016, Ms. Lyons continued to claim unemployment insurance benefits and did not report that she was being paid by another employer.

The administrative law judge concludes that Ms. Lyons chose to voluntarily leave her employment with Securitas Security Services USA in anticipation of accepting new employment with another company, but the new employment did not materialize. Because the claimant's reasons for leaving employment with Securitas Security Services USA was not a good cause reason attributable to Securitas Security Services USA, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment insurance benefits in the amount of \$4,002.00 for the weeks ending June 18, 2016 through August 13, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview or make a firsthand witness available for rebuttal.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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 employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's decision dated July 19, 2016, reference 04, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$4,002.00 and is liable to repay that amount. The employer's account shall not be charged because the employer participated in the fact-finding interview.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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