

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAITLIN VAN ROEKEL

Claimant

APPEAL NO: 13A-UI-12329-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEXTERA ENERGY RESOURCES

Employer

OC: 09/29/13

Claimant: Respondent (2)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Nextera Energy Resources (employer) appealed an unemployment insurance decision dated October 24, 2013, reference 01, which held that Kaitlin Van Roekel (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 25, 2013. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Human Resources Consultant Herman Zurita, Department Manager Donald Church and Employer Representative Bill Stasek. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time supply chain analyst from May 7, 2013 through October 8, 2013 when she was considered to have voluntarily quit after six days with no contact. She was absent on September 16 and 17, 2013 when she reported she was in the hospital. The claimant returned to work on September 19, 2013 and the employer advised her she needed a release to return to work. She later reported that her doctor did not want her working so was absent until September 24, 2013. The claimant provided a doctor's note releasing her to return to work on September 24, 2013.

The claimant was on a previously approved vacation from September 25, 2013 through October 1, 2013. The employer attempted to reach her on October 1, 2013 to discuss expectations that she would return to work on October 2, 2013 but the claimant did not answer and did not return the call. The claimant failed to call or report to work beginning October 2,

2013 and going through the next six calendar days. The employer tried contacting her via telephone and email but received no response. A letter was sent to the claimant dated October 7, 2013, which advised her that in accordance with company policy, she was considered to have voluntarily resigned.

The claimant filed a claim for unemployment insurance benefits effective September 29, 2013 and has received benefits after the separation from employment in the amount of \$2,544.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to call or return to work for four consecutive work days. The law presumes it is a quit without good cause attributable to the employer when an employee is absent for three days without notice and in violation of company policy. 871 IAC 24.25(4).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, the benefits were not received due to fraud or willful misrepresentation and the employer witness did not personally participate in the fact-finding interview. However, the employer representative sent in detailed written documentation which contained factual information regarding the explanation of the job abandonment. In accordance with the Agency definition of participation, the employer participated in the fact-finding interview and its account is not subject to charge. See 871 IAC 24.10. Consequently, a waiver cannot be considered and the claimant is responsible for repaying the overpayment amount of \$2,544.00.

DECISION:

The unemployment insurance decision dated October 24, 2013, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,544.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs