

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSE STANBROUGH
Claimant

APPEAL NO. 10A-EUCU-00136-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRO RESOURCES INC
Employer

**Original Claim: 11-18-07
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 22, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 1, 2010. The claimant participated in the hearing. Ashley Greene, Risk Specialist, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time general laborer for Pro Resources last assigned to Ashley Industrial Molding from September 29, 2009 to January 22, 2010. The claimant contacted on-site staffing consultant Joan Schweer January 25, 2010, and stated she broke her arm roller skating and would be off work six to eight weeks and then have restrictions upon her return to work. Ms. Schweer asked her to provide a doctor's note excusing her from work for the time she was going to be absent and listing her restrictions. The employer told her Ashley Industrial Molding could hold her job for two weeks if she provided medical documentation, but otherwise she would have accumulated too many attendance points to continue there. Ms. Schweer said the employer could place her elsewhere when she provided a doctor's note releasing her to return to work or releasing her to return to work with restrictions. On January 25, 2010, the claimant faxed the employer a doctor's note from the physician who initially treated her that excused her from work January 25 and 26, 2010, and stating she would be on light duty for the remainder of that week. On January 26, 2010, the claimant called Ms. Schweer and said her arm was in a sling and her doctor would not provide her with "anything in writing" about being released to return to work or returning with restrictions. The claimant's job at Ashley Industrial Molding required that she do general labor work, including finishing work by touching up John Deere tractor hoods and side panels and she argued she could have used either hand for that job. On January 27, 2010, the claimant's family physician told her that although she was no

longer taking narcotic painkillers, she was still in a sling and, consequently, he could not give her a full release to return to work but did not list her restrictions. While the claimant could not have continued at Ashley Industrial Molding, the employer was willing to find a position for her with another client if she provided a doctor's note releasing her to return to work even with restrictions, which she failed to do. She was out of the sling February 12, 2010, but did not return to the employer and offer her services at that time.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is separated from her employment without good cause attributable to the employer.

Iowa Code section 96.5-1-d 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. 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.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

(b) Obtain certification of release for work from a licensed and practicing physician;

(c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

(d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant was not released to return to full work duties until February 12, 2010, and the employer is not obligated to accommodate a non-work-related medical condition. She did not provide a doctor's note excusing her from work or listing her restrictions but instead told them she would be off work for six to eight weeks in contradiction to what the doctor she initially was treated by said and before she saw her family physician. Under these circumstances, the claimant had a responsibility to provide the employer with a doctor's excuse covering her absence and listing any possible restrictions that may have been imposed, and she failed to do so. Because she did not provide the employer with evidence she obtained the advice of a licensed and practicing physician or obtain certification of release for work from a licensed and practicing physician and present that to the employer, the separation is without good cause attributable to the employer and benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The February 22, 2010, reference 01, decision is reversed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw