

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETHANY K JONES

Claimant

APPEAL NO: 12A-UI-11955-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST INDUSTRIES INC

Employer

OC: 08/26/12

Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.22(2j(1,2,3)) – Leave of Absence
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated September 26, 2012, reference 01, that held the claimant was not discharged for misconduct on August 28, 2012, and benefits are allowed. A telephone hearing was held on October 30, 2012. The claimant participated. Jeff Ogren, HR Manager, and Valerie Krager, Payroll/Benefits Manager, participated for the employer. Official Notice was taken of employer appeal documents. Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on February 22, 2010, and last worked for the employer as a full-time order entry representative on January 30, 2012. Claimant began FMLA due to pregnancy on May 18, 2012. She delivered on July 4. Dr. Holtz advised to extend the return to work date to August 15 due to post-partum issues.

Claimant had a doctor's appointment on August 13 and there was a discussion about some continuing health issues. Claimant sent an e-mail to the employer requesting additional leave of two weeks to August 27. The employer responded it would need a doctor's note to approve it. Claimant failed to obtain the requested note and none was submitted to the employer.

Claimant did not return to work on August 15. The employer terminated claimant by an August 21 letter that she signed for on August 23 for failing to return to work and/or providing medical information to extend her leave period.

Claimant has received unemployment benefits on her current claim.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

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.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to the employer when she failed to return from a leave of absence on August 15, 2012.

Claimant knew on August 13 when she saw her doctor that her leave return to work date was August 15. Her doctor's advice was conditional about staying off work and the doctor did not issue a written statement she should not return to work. After claimant made an e-mail request to the employer to extend her leave, the employer made it clear it would not do so without medical verification. Claimant did not obtain it and the employer never advised claimant it had extended the leave.

As of the date of this hearing, the claimant does not have a definitive doctor statement that claimant's leave should have been extended for two additional weeks. The law states that a leave extension must be approved by both parties and this did not occur.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since this decision disqualifies claimant after she has received benefits, the overpayment issue is remanded to Claims for a decision.

DECISION:

The department decision dated September 26, 2012 reference 01 is reversed. The claimant voluntarily quit without good cause on August 15, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css