

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALLIE R HARRIS
Claimant

APPEAL NO: 10A-UI-12277-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE SYSTEMS INC
Employer

OC: 07/04/10
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(4) – Absent Without Notice
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 23, 2010, reference 01, that held it failed to establish misconduct in the discharge of the claimant on June 30, 2010, and benefits are allowed. A telephone hearing was held on October 20, 2010. The claimant did not participate. Sheryl Heyenga, Program Director, and Jennifer Thompson, Health Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

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 work as a part-time direct support staff person October 21, 2009. The claimant went on maternity leave on November 30. When the claimant was given an unrestricted work release by her doctor effective March 1, 2010, she contacted the employer about work. The employer offered claimant the same part-time shift she worked prior to leave, but the claimant declined. Claimant requested to be changed to on-call employee status, because she was taking college classes. The employer consented.

The claimant performed some on-call work. During claimant's evaluation on May 6, Manager Thompson advised that she needed to attend some mandatory training classes that she had missed due to her leave, and work one scheduled shift. Thompson set a deadline of June 30 for these matters, and said that a failure to do so could result in termination. The claimant failed to attend the classes and work the required shift. The claimant was considered to have abandoned her job and quit employment.

The claimant failed to respond to the hearing notice. The claimant has received benefits on her current unemployment 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 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to her employer due to job abandonment effective June 30, 2010.

The claimant discontinued her part-time employment status when she returned from maternity leave on March 1 and requested to become an on-call worker with the reason she was attending college classes. Claimant's failure to satisfy the employer requisites of mandatory training and on-call work by June 30 demonstrates a further intent to voluntarily leave employment. While claimant may have had good personal reasons, they are not attributable to the employer.

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 the claimant has received benefits on her claim, this issue is remanded to claims for an overpayment determination.

DECISION:

The department decision dated August 23, 2010, reference 01, is reversed. The claimant voluntarily quit without good cause due to job abandonment on June 30, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his 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/pjs