

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GWENDOLYN M AVANT
Claimant

APPEAL NO. 13A-UI-03408-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 02/17/13
Claimant: Respondent (2-R)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 18, 2013, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 18, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Brandy Whittenbaugh participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked on an assignment working full time at Klein Tools from October 22, 2012, through January 3, 2013. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled, and after three days of absence without notice, employees are considered to have voluntarily quit employment.

The claimant was scheduled to work at 5 a.m. on January 4, 2013. She called and left a message at 1:42 a.m. on January 4 stating that she would not be at work that day due to a family emergency.

The claimant was next scheduled to work January 7 through 11. The claimant was absent on each of the days without notice to the employer. She never contacted the employer afterward and was considered to have voluntarily quit employment.

The claimant filed for and received a total of \$2,013.53 in unemployment insurance benefits for the weeks between February 17 and May 4, 2013.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The unemployment insurance rules state that a claimant absent for three days without giving notice to employer in violation of company rule is presumed to have quit employment without good cause attributable to the employer. 871 IAC 24.25(4).

Due to the claimant's failure to report to work or notify the employer after January 4, 2013, she voluntarily quit employment without good cause attributable to the employer. Since she did not participate in the hearing, her reasons for not returning to work and not notifying the employer are not known.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated March 18, 2013, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs