

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACIE WALTHER
Claimant

APPEAL NO. 10A-UI-13623-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 08-29-10
Claimant: Respondent (2-R)

Section 96.5-1 a – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 23, 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 November 15, 2010. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Karen Malloy, Human Resources Business Partner, and Jan Myers, Director of Pediatrics, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time clinical nurse for Mercy Hospital from November 9, 2006 to September 9, 2010. She gave the employer a two-week notice indicating she was leaving so she could further her employment elsewhere. Continued work was available with Mercy.

The claimant claimed and received unemployment insurance benefits the week after her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Even though the claimant may have left her employment to accept employment elsewhere, she did not participate in the hearing and provide any evidence of possible subsequent employment which would allow her benefits without charging Mercy's account if she was separated from the subsequent employer for no disqualifying reason. In this case, there is not enough evidence that the claimant left to accept employment elsewhere. Therefore, the administrative law judge must conclude the claimant's separation was 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 September 23, 2010, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work 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