

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RITA L KINCHLOW

Claimant

APPEAL NO: 06A-UI-10796-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA

Employer

**OC: 10/01/06 R: 03
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

APAC Customer Services of Iowa LLC (employer) appealed a representative's October 26, 2006 decision (reference 02) that concluded Rita L. Kinchlow (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 27, 2006. The claimant participated in the hearing. Sue Lester, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on March 6, 2006. The claimant worked as a full-time customer service representative. The last day the claimant worked for the employer was July 18, 2006. After the claimant learned her father was terminally ill, she requested time off to go to Alabama to help him leave his home and go to a facility where he could be cared for by other people. The employer granted this time-off request.

The claimant returned to Iowa on August 7 and planned on returning to work when she received information her father had passed away. The claimant again contacted the employer and the employer granted the claimant more time off for the funeral. The employer indicated the claimant could have a leave of absence until August 21, 2006.

The claimant did not return to Iowa by August 21 because she was also the executor of her father's estate. When the claimant initially contacted the employer to extend her time off, she indicated she would be able to return to work on September 4, 2006. The claimant called later and reported she would be back at work on September 11, 2006. The employer did not have a problem extending the claimant's leave under these circumstances.

The claimant did not report to work on September 11. When the employer did not receive any messages from the claimant for the weeks of September 18 and 25, the claimant's supervisor called her cell phone both weeks. The employer left a message asking the claimant to contact the employer. The claimant did not know the employer had called because many times her cell phone did not work in Alabama. The claimant did not call the employer or contact the employer until she returned to Iowa.

The claimant returned to Iowa on October 1, 2006. The claimant did not contact the employer until October 6, 2006. When the employer did not have any contact from the claimant for over three weeks, the employer concluded the claimant abandoned her job and ended the employment relationship on October 2, 2006. The claimant contacted the employer on October 6 and she learned she no longer had a job. The claimant wants to return to work for this employer.

The claimant established a claim for unemployment insurance benefits during the week of October 1, 2006. The claimant filed claims for the weeks ending October 7 through November 18, 2006. The claimant received her maximum weekly benefit amount of \$323.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The claimant's failure to remain in contact with the employer after September 11 indicates she voluntarily quit or abandoned her job. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code section 96.6-2.

The law presumes a claimant has voluntarily quit without good cause when she leaves employment for compelling personal reasons but is absent for more than ten working days. 871 IAC 24.25(20). While communicating with the employer may have been difficult when the claimant was in Alabama, it was not impossible. This conclusion is supported by the fact the claimant contacted the employer to let them know she would be able to return on September 4 and later changed her return date to September 11. The claimant's failure to take reasonable steps to remain in contact with the employer even after she returned to Iowa on October 1, establishes that the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. As of October 1, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending October 7 through November 18, 2006. The claimant has been overpaid \$2,261.00 in benefits she received for these weeks.

DECISION:

The representative's October 26, 2006 decision (reference 02) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of October 1, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending October 7 through November 18, 2006. The claimant has been overpaid and must repay a total of \$2,261.00 in benefits she received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs