

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KAYLA C. SMITH**  
Claimant

**CARE INITIATIVES**  
Employer

**APPEAL 21A-UI-04724-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/25/20**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Overpayment of Benefits  
IAC R. 871-24.10

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 25, 2021, reference 01 unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 14, 2021. The claimant did not participate. The employer, Care Initiatives Inc. participated through its hearing representative Alyce Smolsky, and witnesses Administrator Bo Geidel and Office Manager Robin Wilmart.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer? Was the claimant discharged for disqualifying job-related misconduct? Was the claimant overpaid?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a Certified Nursing Assistant (CNA) starting September 28, 2020. Her last day worked was March 1, 2021. From September 28, 2020 forward she worked full-time except for a few times when she was waiting for COVID test results for her and or children. On March 2, 2021 she voluntarily took a negotiated leave of absence because she said she needed to be on bed rest to have a baby. On March 9, 2021 claimant said her doctor said it was claimant's choice whether to work or not. The employer allowed her a pregnancy leave if claimant elected to take it. Claimant voluntarily took a negotiated leave of absence. As of the date of the hearing the claimant had failed to provide any doctor's note saying she could not work. There is work available for claimant.

**REASONING AND CONCLUSIONS OF LAW:**

As a preliminary matter, the administrative law judge finds that the claimant was not terminated for misconduct.

For the reasons that follow, the administrative law judge concludes the claimant was working full time, and not eligible for benefits.

From claimant's original claim date of October 25, 2020 through March 1, 2021 claimant was working full time and was not unemployed.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25 provides, in relevant part:

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:

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

It is the duty of the administrative law judge to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* When deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The claimant did not quit voluntarily or otherwise and remained employed until March 1, 2021. At that time claimant requested a voluntary leave of absence.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19,

subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2)j(1), (2) provides:

Benefits 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Claimant worked full time until March 1, 2021. After which claimant and the employer negotiated a leave of absence. During this time the claimant was voluntarily unemployed and as such is ineligible for benefits.

The administrative law judge concludes claimant has not received any unemployment benefits in connection with this claim and thus has not been overpaid benefits for the period in question.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

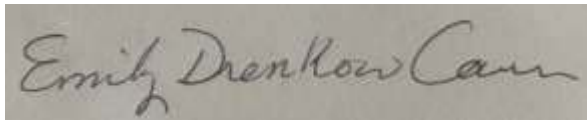
a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by 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) (a) 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.

The administrative law judge concludes that had the claimant received benefits for the period in question, those benefits would have to be paid back. Because there were no unemployment benefits paid, there has been no overpayment of unemployment insurance benefits.

**DECISION:**

The January 25, 2021, reference 01 unemployment insurance decision reversed. The claimant was employed full time from the date of her claim through March 1, 2021. Benefits are denied. The claimant has not been overpaid unemployment insurance benefits to which she was not entitled.



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Emily Drenkow Carr  
Administrative Law Judge  
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April 26, 2021  
Decision Dated and Mailed

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