

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRUDY PERDUE**  
Claimant

**APPEAL NO: 07A-UI-02396-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURGER KING #9226**  
Employer

**OC: 01/14/07 R: 01  
Claimant: Respondent (2)**

871 IAC 26.14(7) - Late Call  
Section 17A.12-3 - Non-Appearance of Party  
Section 96.5-1 - Voluntary Quit  
Section 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Burger King #9226 (employer) appealed an unemployment insurance decision dated February 27, 2007, reference 02, which held that Trudy Perdue (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2007. The claimant provided a telephone number but was not available when called for the hearing, and therefore, did not participate. The employer participated through Joe Sexton, District Manager and Ted Arndt, employer representative. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant provided a telephone number but was not available when called for the hearing and a voice mail message was left for her. She called the Appeals Section on March 27, 2007 at 1:31 p.m. indicating she did not participate in the hearing because she was having problems with her cell phone and did not receive the call for the hearing. The claimant did receive the voice mail message that was left for her at the time of the hearing.

The claimant was employed as a full-time salaried assistant manager from August 1, 2005 through January 3, 2007. Her last day of employment was December 30, 2006 when she was sent home from work due to performance issues. The claimant was having a lot of personal problems that were being brought into the workplace. She was very upset and having problems with her husband who was repeatedly seen at the work site. The claimant was scheduled to

work on January 2, 2007 but had another staff member cover her shift. On January 3, 2007, she called the restaurant manager at home and reported that she did not know if she would be able to cover her shift on January 4, 2007 because she was fighting with her husband. The manager offered the claimant a leave of absence if she could not report to work but told her she either needed to report to work or take the leave. The claimant opted to quit instead and brought in her keys on the following day. The district manager attempted to contact the claimant but was not successful.

The claimant filed a claim for unemployment insurance benefits effective February 27, 2007 and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. If a party responds to a hearing notice after the record has been closed, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). The claimant did not participate because she was having problems with her cell phone. She knew she was having problems with her cell phone on the previous day but did not provide an alternate phone number or request a postponement. The request to reopen the record is denied because the party making the request failed to participate by not being available at the telephone number provided.

The next issue to be determined is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by telling her manager she was going to quit on January 3, 2007. The employer had no plans to discharge the claimant but wanted her to take a leave of absence if she was not able to work her scheduled shift since her personal issues were affecting her ability to work.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated February 27, 2007, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,002.00.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/pjs