

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA M COSSOLOTTO
Claimant

APPEAL NO. 12A-UI-08170-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING COMPANY LC
Employer

OC: 06/03/12
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Jacobson Staffing Company LC (Jacobson), filed an appeal from a decision dated June 26, 2012, reference 01. The decision allowed benefits to the claimant, Jessica Cossolotto. After due notice was issued a hearing was held by telephone conference call on July 31, 2012.

The claimant provided a telephone number to the Appeals Section. That number was dialed at 11:00 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless she contacted the Appeals Section prior to the close of the record. By the time the record was closed at 11:10 a.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer participated by Office Manager Ruth Castor.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Jessica Cossolotto was employed by Jacobson Staffing from February 14 until May 16, 2012. She was assigned on a temp-to-hire basis at Lee Container. On May 16, 2012, she came to the employer's office and notified Office Manager Ruth Castor in writing she was quitting. The resignation stated she was pregnant and "must quit."

The employer had been aware after the date of hire Ms. Cossolotto was pregnant and did give her extra leeway on her absences. She had been absent eight days and left early on two other days, but she was not in danger of being discharged for her attendance.

At the time of resignation Ms. Cossolotto did not provide any statement in writing from her doctor about the necessity for her to quit, and nothing was presented to the Appeals Section on this issue, either.

The record was closed at 11:10 a.m. At 11 15 a.m. the claimant called and requested to participate. The claimant received the hearing notice prior to the July 31, 2012 hearing. She forgot about the hearing and scheduled an appointment which conflicted with the hearing date. She did not contact the Appeals Section to request a postponement.

Jessica Cossolotto has received unemployment benefits since filing a claim with an effective date of June 3, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant quit because she felt she could not continue due to pregnancy. There is no evidence her doctor recommended she quit at the time she notified the employer of her resignation. There is also no evidence of any medical restrictions imposed by the doctor which necessitated the quit. The record establishes the claimant did not have good cause attributable to the employer for quitting and she is disqualified.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The claimant had received the notice of the time and ate for the hearing prior to July 31, 2012. She scheduled herself a conflict for the time of the hearing and did not inform the Appeals Section to reschedule. The claimant did not establish good cause to reopen the hearing. Therefore, her request to reopen the hearing is denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

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) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 26, 2012, reference 01, is reversed. Jessica Cossolotto is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css