

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEANETTE J YARRINGTON**  
Claimant

**APPEAL NO. 07A-UI-11535-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**  
Employer

**OC: 11/04/07 R: 03  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Good Samaritan Society, Inc. (employer) appealed a representative's December 5, 2007 decision (reference 02) that concluded Jeanette J. Yarrington (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 4, 2008. The claimant participated in the hearing. Jenny Jacobsen appeared on the employer's behalf and presented testimony from two other witnesses, Billie Jo Gray and Carol Mikkelson. 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.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 23, 2006. She worked full-time as a laundry/housekeeping aide and certified nursing aide (CNA) in the employer's Fontenelle, Iowa, long-term care nursing facility. Her last day of work was May 1, 2007.

As of May 2, 2007, the claimant went on a general leave due to complications with a pregnancy. The claimant was on notice that the employer's leave periods are usually not in excess of 90 days without approval of the administrator. In this case, the 90 days would have expired on or about August 2. However, the claimant's baby was not born until July 31, 2007, and there had been prior discussions between the claimant and employer, so the employer was in agreement that the claimant need not return by August 2. On August 9 the claimant informed the employer that she anticipated she would be released by her doctor to return to work on September 19, and the employer was in agreement to extend her leave through that date. The claimant was to contact Ms. Mikkelson, the director of nursing, in advance of September 19 so she could be placed on the schedule at that time.

The claimant did not contact the employer again prior to or on September 19, nor did she return to work at that time. Her reason for not contacting the employer or returning to work was that her release for work from her doctor had been postponed; she was not actually released until the first week of October 2007. Ms. Mikkelson left a message for the claimant on September 20 to inquire about her status. On about September 21, the claimant attempted to contact Ms. Mikkelson, but Ms. Mikkelson was not available. The claimant then spoke to a nurse who was on duty, who indicated that she had thought the claimant had decided to quit and stay home with her children because the claimant had not recontacted the employer and sought to return to work. The claimant did not make any additional attempts to contact Ms. Mikkelson to indicate that no, she did not intend to quit, but that she was still intending on returning to her employment once her doctor did release her for work.

The employer did make some attempts to contact the claimant, but the claimant did not get those messages due to some marital problems. The claimant in fact ended up separating from her husband and moving from the area on October 18, so she was not in a position to return to her employment. When the employer received no response or contact from the claimant, on November 7 it sent her a letter indicating that it deemed the employment ended due to the lack of contact. The claimant did not respond to the letter to explain the reason for lack of contact, as at that point she did not intend to seek to return to the employer.

The claimant established a claim for unemployment insurance benefits effective November 4, 2007. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,710.00.

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

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct.

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 asserts that her separation was not “voluntary,” as she had not desired to end the employment; she argues that because of the comment of the staff nurse on September 21, it was the employer's action or inaction that led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee that are construed as being voluntary quit of the employment, such as leaving when the employee has not specifically been told that she is being discharged. 871 IAC 24.25.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit 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.

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The claimant did not return at the agreed-upon end of the leave of absence, and she did not obtain an approved extension of the leave from the employer; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant's failure to return to her employment due to her moving from the area is further not a good cause attributable to the employer. 871 IAC 24.25(2). The claimant has not satisfied her burden. Benefits are denied.

Iowa Code section 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 representative's December 5, 2007 decision (reference 02) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 4, 2007, benefits are withheld until such time as the claimant 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 is overpaid benefits in the amount of \$2,710.00.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw