

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA B ZUGMAIER
Claimant

APPEAL NO: 07A-UI-10194-DT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

TEMPRO SERVICES INC
Employer

**OC: 06/10/07 R: 04
Claimant: Respondent (2/R)**

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

STATEMENT OF THE CASE:

Tempro Services, Inc. (employer) appealed a representative's October 29, 2007 decision (reference 07) that concluded Theresa B. Zugmaier (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 20, 2007. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Colleen McGuinty appeared on the employer's behalf and presented testimony from one other witness, Laura Kilmer. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision; this amended decision is issued solely to correct a miscalculation in the amount of the overpayment as contained in the original decision issued in this matter on November 21, 2007.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on May 16, 2007. Her second and as of the date of the hearing the most recent assignment began on July 23, 2007.

The claimant's assignment which began on May 16 was to be a temp-to-hire position in a Moline, Illinois doctor's office as a medical assistant. She worked only the one day in that assignment. The representative's decision issued in this case was not in the context of this assignment, and it does not appear that the employer was notified of the claimant's original claim for unemployment insurance benefits that was established effective June 10, 2007 in order to earlier raise the issue of the May 16 assignment and separation.

The assignment which began on July 23 and which was the assignment contemplated in the representative's decision in this case was for a part time receptionist position in an East Moline, Illinois doctor's office. She worked Monday through Thursday, with Mondays and Wednesdays being from 8:30 a.m. to 12:30 p.m. and with Tuesdays and Thursdays being from 12:30 p.m. to 4:30 p.m. Her last day on the assignment was September 5, 2007. The assignment ended because the claimant called and left a message for Ms. Kilmer, the employer's medical account manager, on September 6, 2007, in which she indicated that she was quitting the assignment because her class schedule would no longer allow for her to continue in the employment.

When the claimant reactivated her availability for work with the employer as of July 9, 2007, she had indicated that she only had evening classes. When the position was offered to her and she accepted, she indicated the schedule as described would work perfectly with her class schedule. While the representative's decision concluded that there had been a change in the employment arrangement by the employer, the employer denied that there had been any change in the schedule or other terms from that to which the claimant had agreed and accepted.

The claimant established a claim for unemployment insurance benefits effective June 10, 2007. The claimant has received unemployment insurance benefits after the September 6, 2007 separation from employment in the amount of \$1,140.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

Iowa Code § 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.

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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. A substantial change in an employment arrangement would be good cause for a voluntary quit. 871 IAC 24.26(1); Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). However, the evidence presented by the employer here was that there was no change. It is the claimant's burden to establish that there was a change or prospective change, and the claimant has not satisfied her burden. 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.

An issue as to whether the claimant's earlier May 16, 2007 separation was also disqualifying arose during the hearing. This separation has not previously been reviewed by an Agency representative, and the case will be remanded for an investigation and preliminary determination on that issue, as well as any additional overpayment. 871 IAC 26.14(5).

DECISION:

The representative's October 29, 2007 decision (reference 07) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of September 6, 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 \$1,140.00. The matter is remanded to the Claims Section for investigation and determination of the May 16, 2007 separation issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs/pjs