

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODEENE R DIGGINS

Claimant

APPEAL NO. 07A-UI-05828-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC

Employer

**OC: 05/06/07 R: 03
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available for Work
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated May 31, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 27, 2007. Jodeene Diggins participated personally. The employer participated by Luann Modlin, Administrator.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the records, finds: The claimant worked for this employer from August 2006 until December 10, 2006, when she left her employment due to a non-work-related automobile accident that prevented the claimant from performing her job duties. Ms. Diggins worked as a certified nursing assistant on a full-time basis and was paid by the hour. Based upon the medical limitation imposed by her physician based upon her non-work-related automobile accident, Ms. Diggins was unable to perform her duties. The employer instructed the claimant to keep in touch with the company and to provide notification to the company when she was released by her physician to perform her regular job duties. At the time of hearing, the claimant had not been released to return to regular job duties by her physician and has not attempted to return to her previous employment.

Ms. Diggins is actively seeking employment in occupational fields that do not require heavy lifting or physical manipulations. The claimant has actively sought employment by making application with prospective employers that offer employment that does not require strenuous physical activity.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that Ms. Diggins left her employment with the Cedar Falls Health Care Center because of an injury that was not related to her employment. The evidence establishes that the claimant has not recovered as of the time of hearing and has not returned or offered to return and perform services that are unrestricted, allowing the claimant to perform all of the duties of her previous employment.

871 IAC 24.26(6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

For the reasons stated herein, the administrative law judge must conclude that the claimant's leaving was not with good cause attributable to the employer, and therefore benefits must be withheld.

The administrative law judge finds, however, that the claimant is not precluded by her physical limitations from performing work in employment of a lighter nature and that the claimant has been actively and earnestly seeking work that will conform with the reasonable limitations imposed by her physician.

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. The claimant was overpaid benefits in the amount of \$1,240.00.

DECISION:

The decision of the representative dated May 31, 2007, reference 01, is hereby reversed. The claimant quit work due to a non-work injury that was not attributable to the employer. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$1,240.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw