

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAY W JENKINS**  
Claimant

**APPEAL NO. 08A-UI-08018-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADP INC**  
Employer

**OC: 07/06/08 R: 02**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The employer, ADP, filed an appeal from a decision dated September 29, 2008, reference 01. The decision allowed benefits to the claimant, Jay Jenkins. After due notice was issued a hearing was held by telephone conference call on October 21, 2008. The claimant participated on his own behalf. The employer participated by Human Resources Director Julie Fitzpatrick, Operations Supervisor Paul Hanshaw and was represented by ADP in the person of Tammie Miyahata.

**ISSUE:**

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

**FINDINGS OF FACT:**

Jay Jenkins was employed by ADP from January 28, 2008 until July 22, 2008 as a full-time customer service representative. Prior to going on the payroll of ADP he worked as a temporary employee through an agency and had received a copy of the ADP attendance policy on October 27, 2007. The policy notified employees they will be considered a voluntary quit if they are three days no-call/no-show to work.

Mr. Jenkins' last day of work was Friday, July 11, 2008. He and his spouse were visiting family in Missouri when she suffered a relapse of an illness she had contracted some years before. She was seen by a doctor and hospitalized until Monday, July 14, 2008. She remained at a family member's house in Kansas City, Missouri, along with the claimant. He did not call in to work on July 14, 15 or 16, 2008, as required. Instead of considering him to be a voluntary quit at that time, Operations Supervisor called him at his number of record and spoke with him. During that call Mr. Jenkins only said he was out of town and would not be in that day and maybe not the next day.

Mr. Hanshaw reminded the claimant of the policy regarding no-call/no-shows to work and firmly instructed him he must call every day he was going to be absent. The claimant was no-call/no-show July 17, 18, 21 and 22, 2008. At that time he was considered a voluntary quit under the company policy.

Jay Jenkins has received unemployment benefits since filing an additional claim with an effective date of July 20, 2008.

### **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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

While it is unfortunate the claimant's spouse suffered an illness but the employer was generous in contacting him after three days no-call/no-show to rescue the situation and give him the opportunity to explain. He did not mention at that time his wife's illness, nor did he ask to speak with anyone in human resources to ask for some kind of leave of absence.

In spite of being firmly reminded of the policy and instructed to call in every day he would be absent, he did not do so. He was no-call/no-show for an additional four days. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

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 he 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 September 29, 2008, reference 01, is reversed. Jay Jenkins is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs