

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY L HALE
Claimant

APPEAL NO. 07A-UI-00791-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS
Employer

**OC: 12/17/06 R: 01
Claimant: Respondent (2)**

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Cargill Meat Solutions filed a timely appeal from the January 11, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 7, 2007. Claimant Cindy Hale participated. Human Resources Manager Joe Nevel represented the employer. The administrative law judge took official notice of the Agency's records regarding benefits paid to the claimant.

ISSUES:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes that the claimant voluntarily quit.

Whether the claimant's voluntary quit was for good cause attributable to the employer. It was not.

Whether the claimant has been overpaid benefits. She has.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cindy Hale was employed by Cargill Meat Solutions as a full-time, first-shift wrapper/packer/boxer from October 28, 1997 until December 9, 2006. On November 28, the employer placed Ms. Hale on a five-day disciplinary suspension for what the employer termed insubordination and directed Ms. Hale to report back to work on December 4. On December 4, 5, 6, 7, and 8, Ms. Hale reported absences and indicated that the absences were based on a migraine headache. On December 9, Ms. Hale reported an absence due to personal business. After December 9, Ms. Hale ceased reporting for work or calling in absences. The employer's attendance policy required Ms. Hale to call in on a designated message line at least 30 minutes before the start of her shift to report an absence. Ms. Hale was aware of the policy and had complied with it many times in the past. Ms. Hale's absences on December 4-9 were properly reported and the employer continued to have work available to Ms. Hale.

Ms. Hale established a claim for benefits that was effective December 17, 2006 and has received benefits totaling \$2,450.00.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development Rule 871 IAC 24.1(113) provides, in relevant part, as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

Ms. Hale testified that she thought she was discharged on November 28. Ms. Hale testified that the only reason she called in absences on December 4-9 was because she believed she was required do so to satisfy F.M.L.A. requirements. The administrative law judge concludes that both of these assertions are not credible. Ms. Hale's explanation regarding why she called in on December 4-9 does not explain why she did not call in absences between November 29-December 1 or 2, the period corresponding to the five-day suspension. Ms. Hale and the employer both testified that Ms. Hale continued to call in absences on December 4-9. Both parties both testified that Ms. Hale made no further contact with the employer after December 9. Ms. Hale's explanation of why she called in during December 4-9 does not explain why she ceased calling in after that. Ms. Hale's explanation of her behavior does not make sense and is inconsistent with the weight of the evidence. The greater weight of the evidence indicates that the employer continued to have work available for Ms. Hale, but that Ms. Hale failed to return to the employment. The administrative law judge concludes that Ms. Hale voluntarily quit and was not discharged.

The next question is whether the evidence in the record establishes that Ms. Hale's voluntary quit was for good cause attributable to the employer. It does not.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25. Quits in response to reprimands are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28).

The weight of the evidence in the record indicates that Ms. Hale quit for personal reasons. The evidence indicates that the quit was response to the reprimand, albeit a delayed response. Ms. Hale evidenced her intention to quit by ceased contact with the employer and by not returning to the employment. The administrative law judge concludes that Ms. Hale voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Hale is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Hale.

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 Ms. Hale received benefits for which she was ineligible, those benefits constitute an overpayment that Ms. Hale must repay to Iowa Workforce Development. Ms. Hale is overpaid \$2,450.00.

DECISION:

The Agency representatives January 11, 2007, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid \$2,450.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css