

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY DENNEY
Claimant

APPEAL NO: 13A-UI-08974-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 07/07/13
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Stream International, Inc. (employer) appealed an unemployment insurance decision dated July 26, 2013, reference 01, which held that Cathy Denney (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 11, 2013. The claimant participated in the hearing. The employer participated through Bangong Chanthavong, Human Resources Generalist; Pamela Frye, Human Resources Coordinator; and Judith Easton, Team Manager. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer support professional from June 25, 2012 through April 19, 2013. She was considered to have voluntarily quit after she was a no-call/no-show for nine consecutive work days.

The claimant went on a non-work-related medical leave on February 5, 2013 with an anticipated return date of April 3, 2013. Her physician released her to return to work on April 9, 2013 for four hours a day and released her without restrictions on April 15, 2013. The claimant previously worked 7:30 a.m. to 6:30 p.m. on Mondays, Tuesdays, Wednesdays and Saturdays. The employer scheduled her to work 3:00 p.m. to 7:00 p.m. from April 9, 2013 through April 12, 2013. Beginning the week of April 15, 2013, the claimant was scheduled to begin her regular shift working Tuesdays through Saturdays from 10:00 a.m. to 7:00 p.m. She never returned to work and claimed she was told her job was eliminated.

The claimant filed a claim for unemployment insurance benefits effective July 7, 2013 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant went on a non-work-related leave of absence on February 5, 2013 and failed to return to work even though continuing work was available. 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. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, 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. 871 IAC 24.22(j)(2).

The evidence in the record establishes that the claimant did, in fact, fail to return to the employment at the end of the leave of absence. Accordingly, the separation from the employment is deemed a voluntary quit and claimant is disqualified for benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated July 26, 2013, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css