

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEYAWNA L TAYLOR

Claimant

APPEAL NO. 07A-UI-03355-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION

Employer

**OC: 03/04/07 R: 02
Claimant: Respondent (2)**

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 23, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 18, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Steven Zaks participated in the hearing on behalf of the employer with a witness, Svetlana Van Wyk.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from October 10, 2005, to January 23, 2007. The claimant had received a final warning on January 10, 2007, about excessive absenteeism and tardiness.

The claimant was arrested in Missouri on January 23, 2007, due to a probation revocation that was a result of her failing to pay fines that she was court ordered to pay. She had a family member contact the employer around January 26 to notify them that she was incarcerated. When the claimant had not return to work by January 31, the claimant's manager wrote a letter to the claimant indicating that if she did not return to work by February 7, she would be considered to have resigned. When the claimant had not returned to work by February 7, the claimant's manager sent a second letter that day that stated that if she did not return to work by February 12, she would be considered to have resigned. After the second letter was mailed, the claimant's grandfather called and informed the manager that the claimant would be in jail for about a month. The claimant did not see the January 31 and February 7 letter until mid-February when the letters were forwarded to her in jail.

When the claimant had not returned to work by February 12, the employer considered her to have abandoned her job. The claimant was released from jail on February 22. Soon afterward,

the claimant contacted her manager and asked if she still had a job. The manager told her that she was considered to have abandoned her job and due to her past record, she could not be rehired.

The claimant filed for and received a total of \$1,670.00 in unemployment insurance benefits for the weeks between March 4 and April 7, 2007.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

There is an unemployment insurance rule that provides that a claimant is “deemed” to have left employment if she becomes incarcerated. 871 IAC 24.25(16). This amounts to a presumption, which logically must be a rebuttable presumption, depending on the facts. For example, a person who is in jail who is released without charges or with charges being dismissed because the police or prosecutor has concluded the claimant was not the person who committed the crime cannot in anyway be considered to have voluntarily quit employment. In this case, however, the claimant admitted that she violated the terms of her probation by not paying her fines even though she had a year to pay them off. She testified that she had blown it off. I believe this is the kind of situation the rule intends to cover since the claimant by her own action brought about her incarceration and absence from work. She, therefore, quit without good cause attributable to the employer.

Alternatively, even if this case is treated as a discharge, the claimant was discharged for work-connected misconduct. She was discharged for being absent from work for over a month because she was in jail for violating her probation. This would not provide a legitimate excuse for her absences, and she would be disqualified for excessive unexcused absenteeism under rule 871 IAC 24.32(7), which provides that excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,670.00 in unemployment insurance benefits for the weeks between March 4 and April 7, 2007.

DECISION:

The unemployment insurance decision dated March 23, 2007, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$1,670.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs