

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SALLY A ROGERS**

Claimant

**APPEAL NO. 07A-UI-11285-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELECTRONIC DATA SYSTEMS**

Employer

**OC: 11/04/07 R: 02  
Claimant: Respondent (2)**

Section 96.5(1) – Quit  
Section 96.3(7) – Overpayment  
Section 96.6(2) – Timeliness

**STATEMENT OF THE CASE:**

The employer, Electronic Data Systems (EDS), filed an appeal from a decision dated November 26, 2007, reference 01. The decision allowed benefits to the claimant, Sally Rogers. After due notice was issued, a hearing was held by telephone conference call on December 20, 2007. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Operations Manager Tom Jordan and was represented by TALX in the person of Francis Landolphi. Exhibit D-1 was admitted into the record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Sally Rogers filed a claim for unemployment benefits with an effective date of November 4, 2007. The decision in this case was mailed to the employer's address of record on November 26, 2007. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 6, 2007. The appeal was postmarked on December 4, 2007.

Ms. Rogers was employed by EDS from January until October 22, 2007, as a full-time telephone representative. She was no-call/no-show to work on October 18 and 19, 2007. On Monday, October 22, 2007, Operations Manager Tom Jordan and Dawn Freeman called the claimant to find out if she was okay and why she had been no-call/no-show the last two working days. Ms. Rogers said she was having problems finding daycare and was quitting. Continuing work was available to her had she not quit.

Sally Rogers has received unemployment benefits since filing a claim with an effective date of November 4, 2007.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The employer's letter of appeal shows on its face that it was timely. It was postmarked two days before the due date.

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(17) 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:

(17) The claimant left because of lack of child care.

The claimant quit because of problems finding daycare. 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 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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of November 26, 2007, reference 01, is reversed. Sally Rogers is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$887.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css