

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY J TOURNIER
Claimant

APPEAL NO. 08A-UI-06607-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**J & M PARTNERSHIP
MCDONALDS**
Employer

**OC: 06/15/08 R: 03
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated July 16, 2008, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on August 4, 2008. Although duly notified, the claimant failed to respond to the hearing notice and did not participate. The employer participated by Katie Cary, Scott Ames, and Teresa Rozmus.

ISSUE:

At issue in this matter is whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from March 18, 2008, until June 10, 2008, when she voluntarily quit employment by discontinuing to report for scheduled work. The claimant was employed as a full-time crewmember and was paid by the hour. Her immediate supervisor was Terri Torrez.

On or about June 10, 2008, the claimant had received a warning from the employer for failure to report for scheduled work and was warned that her employment was in jeopardy due to her attendance record. The following day, the claimant did not report for scheduled work but instead initially called to indicate that flooding was preventing her access. Subsequently, about 20 minutes later, the claimant called and indicated she was "out of gas." When the employer suggested that the claimant secure alternate transportation to work, Ms. Tournier stated she was "just going to bring in a doctor's note." The claimant had made no previous reference to being ill. The claimant did not report for scheduled work after that day for three or more consecutive work shifts and provided no additional notification to the employer. Based upon the claimant's failure to return, the employer reasonably concluded the claimant had chosen voluntarily quit her employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Tournier left her employment for reasons that were attributable to the employer. It does not.

The evidence in the record establishes that the claimant had been warned for poor attendance and that after June 10, 2008, the claimant chose to discontinue to report for scheduled work for three or more consecutive workdays without providing notice to the employer as required by company policy.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant chose to voluntarily leave her employment for reasons that were not attributable to the employer.

Iowa Code section 96.3-7 provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even if the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3-7(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all the following factors are met: first, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment; second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits; third, the employer must not have participated in the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would be considered an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an

overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The representative's decision dated July 16, 2008, reference 02, is hereby reversed. The claimant voluntarily quit employment for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided she is otherwise eligible. The issue of potential overpayment is remanded to Iowa Workforce Development Claims Division.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw