

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RESURRECION D ADAOAG**

Claimant

**APPEAL NO. 12A-UI-01999-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 01/15/12**

**Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, Cargill, filed an appeal from a decision dated February 22, 2012, reference 01. The decision allowed benefits to the claimant, Resurrecion Adaoag. After due notice was issued, a hearing was held by telephone conference call on March 15, 2012. The claimant participated on her own behalf and with Union President Joe Rush. The employer participated by Assistant Human Resources Manager Sarah James.

**ISSUE:**

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

**FINDINGS OF FACT:**

Resurrection Adaoag was employed by Cargill from October 19, 2006 until November 28, 2011 as a full-time production worker. On November 28, 2011, her attorney sent a letter to the employer's third-party insurance carrier stating Ms. Adaoag was resigning to move to California, where she felt she could get better treatment for her work injuries. Her injuries include her foot, shoulder, and one other area. She has a claim ongoing, but it has not yet been resolved.

Before she quit, she notified Union President Joe Rush she was going on a scheduled vacation to California and did not believe she would be returning. He encouraged her not to quit, because there would likely be a lot of trouble getting proper treatment for her work injury if she was out of state. She resigned anyway.

Mr. Adaoag returned to Iowa in January 2012, and continues to pursue her workers' compensation claim. As far as she was able to determine, she has not been given any kind of specific restrictions by her doctor.

Resurrecion Adaoag has received unemployment benefits since filing a claim with an effective date of January 15, 2012.

## REASONING AND CONCLUSIONS OF LAW:

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(2) 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:

(2) The claimant moved to a different locality.

The claimant quit in order to move out of state because she felt she could get better treatment in California, which did not turn out to be the case. Her decision to quit was based on this erroneous assumption, rather than anything connected with the employer. 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 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant has been unable to provide information regarding what kind of restrictions have been imposed by her doctor due to these injuries and what type of work she would be able to do. The administrative law judge must therefore conclude she has not proved she is able and available for work.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of February 22, 2012, reference 01, is reversed. Rescurrecion Adaoag is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw