

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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WINNEBAGO INDUSTRIES
PO BOX 152
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Appeal Number: 04A-UI-11438-ET
OC: 10-03-04 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 20, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 15, 2004. The claimant participated in the hearing. Gary McCarthy, Personnel Supervisor, participated in the hearing on behalf of the employer. The record was left open for the claimant to provide a doctor's excuse dated March 25, 2004. The claimant called the Appeals Section and left a message stating she needed more time to provide the note but as of December 10, 2004, she had not sent a copy of the note.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production operator for Winnebago Industries from July 8, 2002 to March 29, 2004. She was on a medical leave of absence due to a non-work related injury from March 16 to March 24, 2004. She returned to work March 25, 2004, but left after working a short time and told the employer she would have her doctor fax a note excusing her absence. The employer did not receive a note and the claimant did not call the employer or report for work March 26, 27 or 29, 2004. The claimant called the employer April 7, 2004, and said her doctor was out of town and she would provide a medical excuse April 8, 2004. The employer did not receive a note from her doctor or any further calls from the claimant until April 19, 2004, at which time it received a medical note stating the claimant was seen March 18, March 30 and April 13, 2004. The note did not excuse her from work and the employer determined she voluntarily quit her job by failing to call or show up for work March 26, 27 or 29, 2004. The claimant testified she received a note from her doctor March 25, 2004, and could provide a copy of that document. The record was left open to allow her time to send the note to the Appeals Section but she did not do so.

The claimant has claimed and received benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

The claimant was released to return to work March 25, 2004, but left after working a short time that day. Although the claimant stated she had a note dated March 25, 2004, excusing her from work until after she had surgery for a non-work related injury; she had several opportunities to provide a copy of the note to the employer and the Appeals Section but failed to

do so. She did provide a note to the employer April 19, 2004, stating she was seen by a physician March 18, March 30 and April 13, 2004, but the note did not indicate she went to the doctor March 25, 2004, or excuse her from work. It is the claimant's responsibility to at least maintain contact with the employer about her absence and to make sure the employer has the medical documentation required. Consequently, the administrative law judge concludes the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy and is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The October 20, 2004, reference 01, decision is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,502.00.

je/tjc