

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY L BRANDT
Claimant

APPEAL NO. 06A-UI-09962-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANIMAL RESCUE LEAGUE OF IOWA INC
Employer

OC: 09-10-06 R: 02
Claimant: Respondent (2)

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 5, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 25, 2006. The claimant did participate. The employer did participate through Sheila Siler, Client Relationship Administrator with Merit Resources, and Stephen Storm, Animal Care Technician Supervisor.

ISSUE:

Did the claimant voluntarily quit her employment or was she discharged due to work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an animal care technician full time beginning March 11, 2005 through June 6, 2006, when she voluntarily quit her job.

On June 6, 2006, the claimant was being counseled about her attendance by Mr. Storm. The claimant was unhappy with the counseling session and told Mr. Storm she was sick and she was leaving work. The claimant then alleges that Mr. Storm told her if she got in her car and left, she was walking off the job and no longer had a job with the Animal Rescue League. Mr. Storm alleges that the claimant became belligerent and said she was putting in her two-week notice and that the whole issue of her attendance was 'bullshit' and that no one, including her, liked working for Mr. Storm.

The claimant left and the employer never heard from her again. Mr. Storm assumed she had quit, since she did not return to work after June 6, 2006 nor did she call in to report her absence or to ask for time off. The employer's policies, a copy of which were given to the claimant, provide that a three-day no-call, no-show is a voluntary quit.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

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.

Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. The administrative law judge is persuaded that the claimant was upset she was being reprimanded and that she decided to quit because of that. The claimant alleges she left because she was sick and was told not to come back. A similar situation happened earlier in the year when the claimant left and then called the supervisor. Here, the claimant failed to call a supervisor above Mr. Storm, which in part persuades the administrative law judge that she was not told she was discharged, she quit by not returning to work. Benefits are withheld.

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 5, 2006, 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 \$1,125.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw