

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA E SKINNER**  
Claimant

**APPEAL NO. 08A-UI-04667-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOUNTAIN WEST HEALTH CENTER INC**  
Employer

**OC: 02/24/08 R: 02**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer, Fountain West Health Center, Inc., filed an appeal from a decision dated May 13, 2008, reference 02. The decision found the employer's protest was not timely. After due notice was issued a hearing was held by telephone conference call on May 30, 2008. The claimant, Patricia Skinner, did not provide a telephone number where she could be contacted and did not participate. The employer participated by Human Resources Manager Stacey Hemingway. Exhibit D-1 was admitted into the record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Claimant's notice of claim was mailed to employer's address of record on February 27, 2008, and received by employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer faxed a response on March 3, 2008, but it was not received by Iowa Workforce Development.

Fountain West then received the first quarter 2008 statement of charges, mailed May 9, 2008, showing charges to its account for the claimant. The protest was faxed a second time on May 15, 2008.

Patricia Skinner was employed by Fountain West from July 17 until 29, 2007, as a part-time dietary aide. At the time of hire she received a copy of her job description and was also told by Human Resources Manager Stacey Hemingway the job entailed long periods of standing. On July 29, 2007, she walked off the job in mid-shift. She did not notify a supervisor but made a statement to a co-worker that the job was "too physically demanding" and she was not accustomed to long periods of standing.

Patricia Skinner has received unemployment benefits since filing a claim with an effective date of February 24, 2008. The records of Iowa Workforce Development do not show any wages earned with another employer subsequent to her separation from Fountain West.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Iowa Code section 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.
  - a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The administrative law judge concludes that employer did fax the protest in a timely manner on March 3, 2008, but it was not received by Iowa Workforce Development. When the employer received the first quarter 2008 statement of charges it filed a second protest within the required time period. The protest shall be accepted as timely.

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(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

The claimant quit her employment with Fountain West because she did not like the work. However, her job duties and the physical requirements had been explained to her prior to hire and she accepted them. Continuing work was available to her had she not quit. Under the provisions of the above Administrative Code section, a refusal to do the work as instructed is a voluntary quit without good cause attributable to the employer. 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 dated May 13, 2008, reference 02, is reversed. The employer's protest is timely. Patricia Skinner is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is other eligible. She is overpaid in the amount of \$4,082.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css