

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DONNA J WHALEY**  
Claimant

**YELLOWBOOK INC**  
Employer

**APPEAL 16A-UI-12485-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/23/16  
Claimant: Respondent (4)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 9, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 8, 2016. Claimant did not participate. Employer participated through human resources generalist Maria Gaffney. Official notice was taken of the administrative record of claimant's benefit payment history and her wage history, with no objection.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired full-time on June 6, 2016 as a telephone client services consultant, then changed to part-time on August 8, 2016, and was separated from her part-time employment on August 26, 2016, when she quit.

The employer has a written no-call/no-show policy that if an employee has three consecutive work days of no-call/no-shows it is considered a voluntary quit. The employer requires employees to contact their manager prior to the start of their shift if they are going to be absent. Claimant was aware of the employer's policies.

Claimant was scheduled to work on August 23, 24, and 25, 2016. Claimant did not report to work on August 23, 24, and 25, 2016. Claimant did not call the employer to report her absences on August 23, 24, and 25, 2016. On August 29, 2016, the employer sent claimant a letter stating she had been absent since August 23, 2016 and the employer deemed her to have quit. Claimant never contacted the employer after the letter. The last contact the employer had with claimant was her last day of work on August 22, 2016.

The administrative record shows that claimant has not requalified for benefits since this separation but reflects she appears to be otherwise monetarily eligible for benefits after this part-time employer's wages are excluded from the base period. The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,626.00, since filing a claim with an effective date of October 23, 2016, for the six weeks ending December 3, 2016. The administrative record also establishes that the employer did not participate in the fact-finding interview.

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

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer, and has not requalified but appears to be otherwise monetarily eligible.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(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.

Iowa Code § 96.5-1-g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)g.

See also, *McCarthy v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d. 201 (Iowa 1956) wherein the court held that persons who become unemployed by a layoff from their full-time employer cannot be disqualified for a previous voluntary quit from a part-time employer.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as claimant failed to report for work or notify the employer for three consecutive workdays (August 23, 24, and 25, 2016) in violation of the employer policy, claimant is considered to have voluntarily left employment without good cause attributable to the employer.

Inasmuch as claimant was a no-call/no-show for three consecutive days, the separation is disqualifying. However, claimant has not requalified for benefits since the separation but appears to be otherwise monetarily eligible according to base period wages. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The November 9, 2016, (reference 01), unemployment insurance decision is modified in favor of the appellant. Claimant voluntarily left the employment without good cause attributable to the employer and has not requalified for benefits but appears to be otherwise monetarily eligible. Benefits are allowed, provided claimant is otherwise eligible. The account of this employer (YELLOWBOOK INC, account number 329108-000) shall not be charged.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs