

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY P COOPER
Claimant

APPEAL NO. 10A-UCFE-00002-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

OC: 11/15/09
Claimant: Respondent (2-R)

Section 96.5-1 - Voluntary Quit
Section 96.4-3 - Able to and Available for Work
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 29, 2009, reference 01, that concluded she voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on February 16, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Angie Pettinger participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant able to and available for work?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time as a distribution clerk from July 19, 1997, to July 27, 2009. She was excused from working by her doctor from April 2009 until July 10, 2009. At that time, she was released to return to her job with a restriction that she worked no longer than six hours per day. The employer accommodated that restriction and the claimant worked until July 27, 2009.

Since July 27, 2009, the claimant has called each week stating she is unable to work. She has not provided the employer with any additional medical documentation excusing her from work or indicating what her current restrictions are. The employer has taken no action to terminate her employment and her job is still available. The employer would accommodate any reasonable work restrictions.

The evidence for the hearing contains no information that the claimant was compelled to leave employment due to a medical condition attributable to the employment.

The claimant filed for and received a total of \$3,809.00 in unemployment insurance benefits for the weeks between November 15, 2009, and February 13, 2010.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a.

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that the claimant intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

Based on the evidence, the claimant has left employment without good cause attributable to the employment since there is no medical evidence of a work-related medical condition that makes it impossible for her to work and the employer is willing to accommodate her work restrictions.

The next issue in this case is whether the claimant is able to work and available for work as required by the unemployment insurance law in Iowa Code section 96.4-3. Someone who was employed full time who is unable to work full time in some substantial gainful job is not eligible for unemployment benefits. The evidence shows the claimant is unable to work. She is also ineligible for unemployment benefits for that reason as well.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated December 29, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is

otherwise eligible. She also must demonstrate that she is able to work to receive benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs