

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAUDIA ALLEN
Claimant

APPEAL NO: 07A-UI-07332-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARBIES
Employer

**OC: 06-17-07 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 July 20, 2007, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 15, 2007. The claimant participated in the hearing. Jeremy Delmage, Unit Director; Sheila Main, Assistant Unit Director; and Jennifer Coe, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three, were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time crew member for Arbies from May 10, 2006 to December 4, 2006. She was scheduled to work December 1, 2 and 4, 2006. On December 1, 2006, she called at 10:30 a.m. for her 11:00 a.m. shift and said she could not work because she was out of town and having car trouble. She did not call December 2 or December 4, 2006, because she did not have access to a phone and assumed her employment was terminated December 4, 2006, when she did not call December 2, 2006. The employer considered her to have abandoned her job by not calling on time December 1, 2006, or reporting for work December 1, 2 or 4, 2006.

The claimant has claimed and received unemployment insurance 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 her 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 call on time or report for work December 1, 2006, or notify the employer for two consecutive work days after that in violation of the employer's policy, she is considered to have voluntarily left her 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 July 20, 2007, reference 03, decision is reversed. The claimant voluntarily left her 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 \$504.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs