

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NOLAN A MARTIN**  
Claimant

**APPEAL NO. 08A-UI-02486-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES OF IOWA**  
Employer

**OC: 02/03/08 R: 04  
Claimant: Respondent (2)**

Section 96.5-1 – Quit  
Section 96.5(1)d – Voluntary Leaving (Illness/Injury)  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

APAC Customer Services of Iowa (employer) appealed a representative's March 3, 2008 decision (reference 01) that concluded Nolan Martin (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 27, 2008. The claimant participated personally. The employer participated by Turkessa Hill, Human Resources Generalist, and Mona Jensen, Supervisor.

**ISSUE:**

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 9, 2006, as a full-time customer service representative. On or about September 10, 2007, the claimant notified the employer that he was going to resign due to health issues. He had heart palpitations and anxiety. The employer allowed the claimant a medical leave of absence from September 13 to 23, 2007.

On October 9, 2007, the claimant became eligible to apply for Family Medical Leave (FMLA). He turned in paperwork for FMLA on October 9, 2007. The claimant's physician wrote in the Medical Facts statement of the FMLA paperwork. "Anxiety with panic attacks and agoraphobia. Not able to be around other people when anxious. Date condition commenced: 2001. Probable duration of condition: Long term". The administrator could not tell the frequency or the leave amount the physician was requesting. If the claimant needed intermittent with the possibility of extended leave, the physician did not state as such. The employer outlined the issues for the claimant so he could relay the information to the physician. The physician completed another set of FMLA paperwork for the claimant on November 26, 2007. He again failed to complete the paperwork properly. The physician told the claimant he was offended and

refused to complete the paperwork again. The employer told the claimant that he should try again. The claimant did not understand when the employer told him that all his time off for his health problems would be covered by FMLA once the paperwork was turned in. He thought he was accruing attendance points for his absences due to his health concerns.

In the meantime the employer allowed the claimant to leave his workstation or the workplace when ever he needed to do so. The employer was not assessing attendance points for the claimant's absences due to health concerns. It was assessing attendance points for the claimant's frequent absences due to lack of a babysitter. The claimant did not ask for any other accommodations for his health concerns or indicate he would be quitting due to those concerns.

On January 24, 2008, the claimant told his supervisor he was leaving. The supervisor did not think his statement was out of the ordinary. The statement may have sounded like the sort of comment the claimant would make if he needed time away from work or if he were leaving for the day. The claimant testified at the hearing that this was his way of quitting. Even though he quit on January 24, 2008, the claimant notified the employer on January 26, 2008, that he would not be at work because he did not have a babysitter. The employer telephoned the claimant and left a message indicating that attendance was important and the claimant should contact her. On January 28 and 29, 2008, the claimant did not appear for work or notify the employer of his absence. The employer telephoned twice more and left messages. The claimant did not respond. The employer assumed the claimant resigned. Continued work was available had the claimant not resigned.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the 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 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. *Polley v. Gopher Bearing Company*, 478 N.W.2d 775 (Minn. App. 1991).

Inasmuch as the claimant did not give the employer an opportunity to resolve his complaints prior to leaving employment, the separation was 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.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's March 3, 2008 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the

claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,372.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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