

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA KAFTON
Claimant

APPEAL NO: 12A-UI-03248-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIED SOLUTIONS LLC
Employer

OC: 02/05/12
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Allied Solutions, LLC (employer) appealed an unemployment insurance decision dated March 21, 2012, reference 01, which held that Andrea Kafton (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 12, 2012. The claimant participated in the hearing. The employer participated through Linda Maradol, employee relations analyst; Laurie Myers, manager of payroll/beverages; Jennifer Myers, customer solutions specialist supervisor; and Patricia McGarry, attorney at law. Employer's Exhibits One through Three and Claimant's Exhibit A were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer service representative from June 16, 2008 through January 31, 2012. She went on intermittent leave under the Family Medical Leave Act (FMLA) in May 2011 due to a pregnancy. The claimant went off work completely under FMLA on November 15, 2011. She exhausted her FMLA on December 14, 2011, so she requested and was granted an additional six weeks of non-work-related medical leave.

The claimant's medical leave was over on January 24, 2012 and she was scheduled to return to work on January 25, 2012. The claimant failed to call or report to the employer on January 25, 26, 27, 30 and 31, 2012. The employer called the claimant on January 31, 2012, and the claimant said she was not yet released to return to work and did not provide any additional information as to when she expected to be released or when she was next going to the doctor's

office. The employer told the claimant that since she was unable to return to work after her Family and Medical leave, her employment was terminated. The claimant was advised to reapply for work when she was released to return without restrictions. The employer had a position for the claimant on that date and continues to have a position available for the claimant, but she has not returned to the employer to offer her services.

The employer had not received any medical documentation from the claimant regarding when she was going to be released to return to work. After the fact-finding interview on March 16, 2012, the claimant contacted her physician, who faxed in a medical note to Iowa Workforce dated March 16, 2012 indicating the claimant was released to return to work on February 2, 2012. It is unclear whether there were any medical notes dated on or before the release date specifying the date when the claimant would be released to return to work without restrictions.

The claimant filed a claim for unemployment insurance benefits effective February 21, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to call or return to work on January 25, 2012 at the expiration of her leave of absence. She had already exhausted her FMLA and this was an additional six weeks the employer granted.

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed, the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

The evidence in the record establishes that the claimant did, in fact, fail to return to the employment at the end of the leave of absence. Accordingly, the separation from the employment is deemed a voluntary quit. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful

misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated March 21, 2012, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw