

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VERONICA HOTEKIER**  
Claimant

**APPEAL NO: 09A-UI-06488-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MEDICAL STAFFING NETWORK INC**  
Employer

**OC: 02-08-09**  
**Claimant: Respondent (2R)**

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 April 16, 2009, 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 May 20, 2009. The claimant participated in the hearing. Jodi Faust, Area Manager, and Bill Saunders, Employer Representative, participated in the hearing on behalf of the employer.

**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 CNA from February 8, 2007 to October 2, 2008. She worked full-time hours on both second and third shifts. The claimant asked for time off work from September 18, 2008 through October 1, 2008 and it was granted. The employer told the claimant to call about being scheduled but the employer did not hear from the claimant. A staffing coordinator called the claimant to see if she was interested in any of the eight shifts available. A message was left but the claimant did not return the call. The employer placed her on inactive status. Employees can be inactive for six months before they are terminated and have to reapply. Employees are required to maintain contact with the employer to provide their availability. The claimant called the employer December 11, 2008, to request work but the area manager was gone that day. The employer told the claimant to call the next day but the claimant failed to do so. Continuing work was available.

The claimant filed a claim for unemployment insurance benefits effective February 8, 2009, and has received benefits after the separation from employment.

## **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(20) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

The claimant requested time off work but failed to return afterwards. 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 without good cause attributable to the employer and benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 not eligible for those benefits. The matter of determining 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 April 16, 2009, 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 matter of determining 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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