

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GINGER PERKINS**  
Claimant

**APPEAL NO: 12A-UI-12307-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**US XPRESS INC**  
Employer

**OC: 08/19/12**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

US Xpress (employer) appealed an unemployment insurance decision dated October 4, 2012, reference 01, which held that Ginger Perkins (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 November 8, 2012. The claimant participated in the hearing. The employer participated through Kelly McGraw, Employee Relations Manager and Ashley Freeman, Human Resources Specialist. 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 considered all of the evidence in the record, finds that: The claimant was employed as a full-time over-the-road truck driver from May 24, 2011 through August 17, 2012. Her last day of work was May 8, 2012 and after that, she went on a non-work-related medical leave of absence under the Family Medical Leave Act (FMLA). The claimant's physician indicated she had an anticipated return to work date of August 8, 2012 and no further medical documentation was provided. The employer advised her that prior to returning to work, she had to have a full release from her physician, pass a drug screen and take two physical tests.

The employer sent the claimant a final notification letter dated August 9, 2012 and she signed for the certified letter on August 15, 2012. The letter confirmed that her leave was over as of August 16, 2012 and she was expected to return to work on August 17, 2012. The claimant was reminded she had to provide medical certification confirming she was able to return to work. The letter informed her that if she needed an accommodation or was unable to return to work at that time but was able to return within a reasonable, defined period of time after the

expiration of her 12 weeks, she needed to contact the employer prior to the scheduled date of return. Her failure to return to work and/or to contact the employer by August 17, 2012 would be considered job abandonment. The claimant did not return to work and failed to contact the employer until August 20, 2012 when she was considered to have voluntarily quit.

The claimant filed a claim for unemployment insurance benefits effective August 19, 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.

The claimant failed to contact the employer and return from a non-work-related medical leave of absence on August 17, 2012. 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 is therefore 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 and claimant is disqualified.

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 October 4, 2012, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are

*<http://www.iowaworkforce.org/ui/appeals/index.html>*

withheld until she has worked in and has 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css