

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOROTHY A PUCKETT
Claimant

APPEAL NO. 09A-UI-01379-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 12/28/08 R: 02
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Care Initiatives filed an appeal from a representative's decision dated January 20, 2009, reference 01, which held that no disqualification would be imposed regarding Dorothy Puckett's separation from employment. After due notice was issued, a hearing was held by telephone on February 17, 2009. The employer participated by Tammy Kappel, Director of Nursing; Janie McDowell, LPN; and Murt Steffens, Administrator. The employer was represented by Josh Burrows of TALX Corporation. Ms. Puckett did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Puckett was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Puckett began working for Care Initiatives on February 26, 2008. She worked full time as a certified nursing aide. On December 19, she called to report that she would not be at work because her vehicle was stuck in her driveway. The employer sent someone to her home to get her but Ms. Puckett refused to come to work.

Ms. Puckett was scheduled to be at work at 6:00 a.m. on December 20. When she did not arrive on time, Janie McDowell called her at approximately 6:15 and left a message. Ms. Puckett did not return the call and, therefore, Ms. McDowell placed a second call to her at approximately 8:00 a.m. At that time, Ms. Puckett complained about the manner in which Ms. Kappel had spoken to her the previous day about her absence. She would not directly answer Ms. McDowell's question as to whether she was quitting. She did not thereafter report for work. Continued work would have been available if Ms. Puckett had continued reporting for work.

Ms. Puckett filed a claim for job insurance benefits effective December 28, 2008. She has received a total of \$1,099.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes from all of the evidence that Ms. Puckett initiated her separation from Care Initiatives. She was not told on December 19 that she was fired. The fact that she did not report for work as scheduled on December 20 is indicative of an intent to sever the employment relationship. She did not tell Ms. McDowell on December 20 that she was not at work because she had been fired the day before. She refused to give a direct response to Ms. McDowell's question as to whether she was quitting. She only stated that she did not like the way Ms. Kappel had spoken to her the day before. Based on the above factors, the administrative law judge concludes that Ms. Puckett no longer wanted to work for Care Initiatives. Therefore, the separation shall be considered a voluntary quit.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Puckett did not participate in the hearing to provide testimony as to why she stopped reporting for work. It appears that she quit because she did not like the way Ms. Kappel spoke to her on December 19. Ms. Puckett did not participate in the hearing to explain what it was about the conversation that caused her to quit.

Even if Ms. Kappel had acted inappropriately during the phone call, the employer was entitled to an opportunity to address the problem before Ms. Puckett quit. The administrator was not aware of any concerns Ms. Puckett had about the manner in which she had been treated by Ms. Kappel. After considering all of the evidence, the administrative law judge concludes that good cause attributable to the employer has not been established. As such, benefits are denied.

Ms. Puckett has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Ms. Puckett will be required to repay benefits already received.

DECISION:

The representative's decision dated January 20, 2009, reference 01, is hereby reversed. Ms. Puckett voluntarily quit her employment for no good cause attributable to the employer. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Puckett will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw