

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATISHA WILLIAMS-ROJAS

Claimant

APPEAL NO: 07A-UI-10484-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRIMM BROTHERS PLASTICS CORP

Employer

**OC: 01/28/07 R: 04
Claimant: Respondent (2)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Grimm Brothers Plastics Corporation (employer) appealed an unemployment insurance decision dated November 8, 2007, reference 03, which held that Latisha Williams-Rojas (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 30, 2007. The claimant participated in the hearing. The employer participated through Linda Wilson, Human Resources Manager and Nick Zaugg, Manufacturing Manager. 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 CNC router operator working on third shift from July 16, 2007 through October 10, 2007 at which point she was placed on work-restrictions from an injury sustained with Tyson Fresh Meats, a previous employer. Her work injury date with Tyson was January 27, 2006. The restrictions limit her lifting from 10 to 20 pounds and she can work no more than 33 percent of a regular work day lifting, pushing and pulling. The unrelated work restrictions prevent the claimant from completing her regular job duties. The employer has tried to accommodate the claimant by offering her light duty work during the day but the claimant's regular shift is a night shift and she has limited availability during first shift. She has not yet received a full medical release from the treating physician.

The claimant filed a claim for unemployment insurance benefits effective January 28, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code sections 96.5-1. The claimant left her CNC router operator position on October 10, 2007 due to a medical injury which is unrelated to her current employment.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant is considered to have gone on a medical leave of absence from her regular job due to a non-work-related medical injury or illness. She would only be eligible for benefits if her position were not available to her after her recovery. A "recovery" under Iowa Code

section 96.5-1-d means a complete recovery without restriction. White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) (citing Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985)). The claimant has not been released to return to full work duties. Accordingly, the separation is considered to be a voluntary quit without good cause attributable to the employer and benefits must be 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated November 8, 2007, reference 03, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are 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 claimant is overpaid benefits in the amount of \$1,374.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs