

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTINA M YARBRO**  
Claimant

**APPEAL NO. 11A-UI-08523-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MONGOOSE INC**  
**MCDONALD'S RESTAURANT**  
Employer

**OC: 05/08/11**  
**Claimant: Respondent (2-R)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 16, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on July 27, 2011. Employer participated through owner, Steve Gossage. Employer's Exhibit 1 (pages 1 – 3) was admitted to the record. Claimant responded to the hearing notice instructions but was not available when the hearing was called, did not respond to the voice mail message (the claimant's incoming message had recorded language to the effect: "Hello? Hello? For the last time, there aren't any Mexicans here.") by the time the hearing record was closed, and did not participate.

**ISSUE:**

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer and whether she is overpaid benefits as a result.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant contacted the administrative law judge (ALJ) after the hearing record was closed and said her cell phone signal was not strong enough to receive the call in the classroom. She claimed to have been on hold with a male clerk for ten minutes but the clerk who transferred the call is female. The clerk advised the ALJ that the phones were not busy when the claimant called in and the message was transmitted to the ALJ within a minute of receipt.

Claimant was employed full-time as acting manager October 10, 2010 and was separated from employment on May 10, 2011 when she quit because of "a lack of understanding for family values" and because of being told she had performed her job wrong. (Employer's Exhibit 1, page 2) The employer had allowed her to leave immediately when her father was ill and she needed to travel out-of-state to see him. She separated from her boyfriend and did not have childcare arranged so the employer accommodated that need as well. The employer also allowed her to bring her child to work with her on a couple of occasions. She did not present

medical evidence of stress related to the employment or ask the employer for further accommodation. Gossage mediated the work relationship between supervisor Janet and the claimant after claimant's job performance diminished in January 2011 and the employer placed Janet in the store four days per week to assist her in bringing her performance back to expected standards. Her job was not in jeopardy but she did receive a reprimand on May 4, 2011 from Janet for not following her scheduled hours and poor staff communication issues. (Employer's Exhibit 1, page 3)

Claimant has received unemployment benefits since filing a claim with an effective date of May 8, 2011.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

Although the claimant may have intended to participate in the hearing, she failed to make herself available for the hearing at the number provided. Her claims about when she called, to whom she spoke, and how long she was on the line are not credible and she did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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(22) and (28) provide:

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 § 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 § 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:

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

The claimant's reason for leaving because of a lack of family values is disingenuous since the employer accommodated her family issues on multiple occasions, even though childcare is the employee's responsibility. She claims stress was a reason for leaving but provided no medical documentation to the employer concurrent with the claimed issue. Furthermore, the claimant's bigoted incoming voice mail message is not consistent with her argument about the employer's "values." The ALJ concludes that the claimant quit within a week after having received a written reprimand on May 4, 2011. This is not a good cause reason attributable to the employer for leaving the employment. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. 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 may 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. If so, the employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

**DECISION:**

The June 16, 2011 (reference 01) decision is reversed. Claimant voluntarily left the 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.

**REMAND:** The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css