

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LYNN M PENFOLD
4360 NE 5TH
DES MOINES IA 50313

ADP INC
c/o ADP-UCS
PO BOX 4410
DIAMOND BAR CA 91765-4410

ADP INC
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Appeal Number: 05A-UI-04349-RT
OC: 03-27-05 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1- Voluntary Quitting
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, ADP, Inc., filed a timely appeal from an unemployment insurance decision dated April 12, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Lynn M. Penfold. After due notice was issued, a telephone hearing was held on May 16, 2005 with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the notice of appeal. Lacey Schmidt, Human Resources Specialist, and Kim Dewey, Benefits Administrator, participated in the hearing for the employer. The employer was represented Tammie Miyahata. Tony Plummer, Call Center Supervisor, was

available to testify for the employer but not called because his testimony would have been repetitive and unnecessary. Employer's Exhibits 1 through 3 were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 through 3, the administrative law judge finds: The claimant was employed by the employer as a full-time client services representative from February 16, 2004 until she voluntarily quit effective March 9, 2005. The claimant voluntarily quit when she failed to return from a medical leave of absence on March 7, 2005. The claimant was on a medical leave of absence by mutual agreement of the parties. The medical leave documents were sent to the claimant by letter dated February 11, 2005 as shown at Employer's Exhibit 2 and the claimant was expected to return to work on March 7, 2005. However, the claimant did not return to work on March 7, 2005 nor did she contact the employer for any kind of extension on her leave of absence. The employer called the claimant on March 8, 2005 and notified the claimant that she needed to return to work and if she did not it would be considered job abandonment. The claimant still did not return to work so she was again called by the employer on March 9, 2005 and basically informed of the same thing. The claimant stated at that time that she thought she was to return on March 8, 2005. In any event, the claimant never returned to work. The employer sent the claimant a return to work reminder letter on March 7, 2005 as shown at Employer's Exhibit 3. The claimant was released to return to work by her physician on March 7, 2005 as shown at Employer's Exhibit 1. The employer has policies that provide that if one is on a leave of absence and does not keep in communication with the employer and does not return to work or is absent for two days in row as a no-call/no-show, the absences can be treated as job abandonment and a voluntary quit. The claimant never returned to work and was treated as a voluntary quit.

The claimant never expressed any concerns to either of the employer's witnesses, Kim Dewey, Benefits Administrator, or Lacey Schmidt, Human Resources Specialist, nor did she do so to anyone else that those two witnesses heard about. The claimant also never indicated or announced an intention to quit to the two employer's witnesses if any problems she was having at work were not addressed by the employer nor did she do so to anyone else that those two witnesses heard about. If the claimant had returned to work as expected on March 7, 2005, work remained for the claimant. Pursuant to her claim for unemployment insurance benefits filed effective March 27, 2005, the claimant has received unemployment insurance benefits in the amount of \$257.00 for one week, benefit week ending April 2, 2005. The claimant has filed for no other benefits.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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 24.22j(1)(2)(3) provide:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. 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.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) 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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The employer's witnesses credibly testified, and the administrative law judge concludes, that the claimant left her employment voluntarily effective March 9, 2005. The employer's witnesses testified that the claimant was on a leave of absence and was scheduled to return on March 7, 2005. This is confirmed by Employer's Exhibits 1, 2 and 3. The claimant was even released by her physician to return to work. However, the claimant never returned. The employer has rules or policies providing that if an employee is on a leave of absence and does not keep in communication with the employer and fails to return after a leave of absence or is absent for two days in a row without notifying the employer, the employee is to be considered to have abandoned her job and has quit. The administrative law judge also notes that the rules above so provide. The administrative law judge notes that this leave of absence was approved by

both sides and was to end on March 7, 2005. The claimant failed to return at the end of the leave of absence and has become unemployed, and, therefore, she is considered to have voluntarily quit.

The issue then becomes whether the claimant quit without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable to the employer for her quit. The claimant was simply on a leave of absence and failed to return at the end of the leave of absence and this is not good cause attributable to the employer. The claimant was also absent for three days without notifying the employer and this also is not good cause attributable to the employer. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. There is also no evidence that the claimant ever expressed any concerns to the employer about her working conditions or that she indicated or announced an intention to quit if any of her concerns were not addressed by the employer. Finally, there is no evidence that the claimant's illness causing her medical leave of absence was related to her employment or that she was compelled to leave her employment. There is no competent evidence showing adequate health reasons to justify her termination nor is there any evidence that the claimant informed the employer of the work-related health problem and informed the employer that she intended to quit unless the problem was corrected or reasonably accommodated. There is also no evidence that the claimant recovered from her illness and the recovery was certified by a physician and she returned and offered to perform services to the employer and no suitable, comparable work was available. In fact, the evidence shows that the claimant was released to return to work on March 7, 2005 by her physician. Accordingly, the claimant has not demonstrated by a preponderance of the evidence that she was separated either because of illness related to her employment or unrelated to her employment and, if so, that she has otherwise established that her quit was with good cause attributable to the employer. See 871 IAC 24.26(6)(a) and (b).

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily on March 9, 2005, without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$257.00 since separating from the employer herein on or about March 9, 2005 and filing for such benefits effective March 27, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 12, 2005, reference 01, is reversed. The claimant, Lynn M. Penfold, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. She has been overpaid unemployment insurance benefits in the amount of \$257.00.

tjc/tjc