

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARA A NELSON**  
Claimant

**APPEAL NO. 12A-UI-06026-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TIMBERLINE MANUFACTURING COMPANY**  
Employer

**OC: 04/22/12**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Timberline Manufacturing Company filed a timely appeal from a representative's decision dated May 14, 2012, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on June 18, 2012. The claimant participated. The employer participated by Mr. Thomas Appel, human resource manager.

**ISSUE:**

At issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Sara Nelson was employed by Timberline Manufacturing Company from November 7, 2011, until April 9, 2012, when she was separated due to job abandonment. Ms. Nelson worked as a full-time assembler and was paid by the hour. Her immediate supervisor was Sandy Gann.

Ms. Nelson's last day of work was March 14, 2012. The claimant called in on March 15, 2012, to indicate that she could not report to work due to a non-work-related illness or injury. Initially, Ms. Nelson maintained contact with the employer, indicating that she next had a doctor's appointment on April 4, 2012. When the employer had not heard from Ms. Nelson for a period of time, the employer attempted to reach the claimant on March 28. The claimant had a practice of leaving messages for the human resource manager late at night, when no one was present to receive her calls. On March 29, Ms. Nelson responded to the employer's message by, in turn, leaving a message that stated, "Call me." Although the employer called the claimant and left messages on April 2 and 3, Ms. Nelson did not respond to the messages and had no further contact with the employer.

After the claimant had failed to respond to the request for information and the claimant had not called in to report her status or that she would not be returning to work after what the employer considered to be her doctor's appointment date of April 4, 2012, the employer reasonably

concluded that Ms. Nelson had abandoned her job. After the claimant had failed to report or provide notification for three consecutive work days in violations of company policy, the claimant was sent a letter on April 9, 2012, informing her that her employment had ended. Ms. Nelson did not respond to the letter.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes the claimant quit her employment by failing to provide notification to the employer for three or more consecutive workdays in violation of company policy. It does.

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 24.25(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 is entitled to expect its employees to report for work as scheduled or to be notified when and why the employer is unable to report to work. Inasmuch as the claimant failed to respond to repeated requests for information and failed to report or notify the employer for three or more consecutive workdays in violation of the employer's policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

Iowa Code section 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.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

**DECISION:**

The representative's decision dated May 14, 2012, reference 02, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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