

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M CYRUS

Claimant

APPEAL NO. 11A-UI-15802-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO

Employer

OC: 11/06/11

Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Sears Roebuck & Company filed a timely appeal from an unemployment insurance decision dated November 30, 2011, reference 01, that allowed benefits to Dawn M. Cyrus. After due notice was issued, a hearing was begun on January 11, 2012, and was eventually continued on February 17, 2012. Ms. Cyrus participated on her own behalf. Exhibits A through C were admitted into evidence on her behalf. Justin Crick and William Hartke participated for the employer. The administrative law judge takes official notice of Agency benefit payment records.

ISSUES:

Was the separation a quit or a discharge?

Was the separation a disqualifying event?

FINDINGS OF FACT:

Dawn M. Cyrus was working as a sales associate for Sears Roebuck and Company when she began short-term disability leave on August 17, 2011. She was scheduled to return to work on September 27, 2011. She did not do so and did not provide documentation to her supervisor or to the human resources department documenting her medical status. The company attempted to maintain contact with Ms. Cyrus. Eventually, it abandoned its attempts because of Ms. Cyrus's lack of response.

Ms. Cyrus has received unemployment insurance benefits since filing a claim effective November 30, 2011.

REASONING AND CONCLUSIONS OF LAW:

The first step in analyzing this evidence is to characterize the separation. While the fact-finder characterized it as a discharge, the evidence in this record indicates that Ms. Cyrus initiated the separation by failing to return to work and failing to respond to the company's request for

documentation of her continued absences. A separation under these circumstances is better characterized as a quit.

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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. Benefits are withheld unless the separation was for good cause attributable to the employer. The administrative law judge finds evidence of good personal cause, the birth of the claimant's child. Since this cause was not attributable to Sears Roebuck & Company, benefits must be 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 question of whether the claimant must repay the benefits she has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated November 30, 2011, reference 01, is reversed. Benefits are withheld until the claimant 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 question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw