

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLORIA HOLLINGSBED
Claimant

APPEAL NO: 09A-UI-15179-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

OC: 09-13-09
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 2, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 9, 2009. The claimant participated in the hearing. Jamie Briesch, Employee Relations Supervisor and Marcy Schmidt, Benefits Supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time guest room attendant for IOC Services from March 10, 2008 to July 20, 2009. The claimant went on FMLA due to pregnancy April 29, 2009, and the FMLA was due to expire July 18, 2009. On July 14, 2009, Benefits Supervisor Marcy Schmidt sent the claimant a certified letter stating that her FMLA was getting ready to exhaust July 18, 2009, and she needed to contact Ms. Schmidt but the claimant did not claim the letter. Ms. Schmidt also called the claimant July 14, 2009, and told her the certified letter was in the mail and to be expecting it. She told the claimant the letter explained she needed to provide certain paperwork and the employer provided other options if she was not ready to return but she needed to give the employer a work release or a note from her doctor on how much longer she would be out. She never heard from the claimant again. Ms. Schmidt attempted to call the claimant several other times without success. Because the claimant failed to notify the employer she was ready to return to work and never made contact with the employer again the employer sent her another letter July 20, 2009, stating her FMLA was over and if she was able to return she should let the employer know and if she was not and could not provide a note from her doctor stating when she could return her employment would be terminated but again it did not hear from the claimant. On July 24, 2009, the employer sent her a letter about COBRA benefits and life insurance and the claimant did not respond nor was the letter returned

indicating the employer mailed the letter to the wrong address. It never had any difficulty reaching the claimant's voice mail either. Consequently, the claimant's employment was considered to have been terminated effective July 20, 2009.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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. 871 IAC 24.25. The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant did not maintain contact with the employer and did not respond to the employer's letters and phone calls telling her that her FMLA was due to end July 18, 2009. Under these circumstances the administrative law judge must conclude the claimant voluntarily left her employment without good cause attributable to the employer. Therefore, benefits are denied.

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 will 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. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The October 2, 2009, reference 01, decision is reversed. The claimant voluntarily left her 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. In this case, the claimant has received

benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs