

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL PETERSON
Claimant

APPEAL NO. 06A-UI-09466-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

**OC: 08/13/06 R: 02
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Kum & Go (employer) appealed an unemployment insurance decision dated September 14, 2006, reference 01, which held that April Peterson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 10, 2006. The claimant did not participate in the hearing and the employer participated through Judy McCaslin, General Manager.

The claimant requested a postponement on October 9, 2006 because she is working. She was hired on October 3 and started working on October 4, 2006. No excuse was given for the untimely request and since it could have been requested as early as October 3, 2006, the postponement was denied. She was advised she could submit a written statement in lieu of her participation. The claimant did not fax a written statement to the Appeals Section until after the scheduled start time of the hearing at 8:01 a.m. on October 10, 2006. The hearing record closed at 8:13 a.m. and the fax was pulled off the fax machine at 8:15 a.m. The Administrative Law Judge was advised of the faxed statement at 8:52 a.m. The statement was mailed to the employer but was not relied upon as it was not submitted in a timely manner.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time associate from September 3, 2004 through July 15, 2005 when she left her employment due to non-work-related medical reasons. She returned to work on September 16, 2006 in a part-time capacity due to her own choice.

The claimant filed a claim for unemployment insurance benefits effective August 13, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code sections 96.5-1. The claimant left her employment on July 15, 2005 due to a non-work related medical condition.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant was unable to work due to a non-work-related medical condition. She would only be eligible for benefits if her position were not available to her after her recovery. A "recovery" under Iowa Code section 96.5-1-d means a complete recovery without restriction. White v.

Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) (citing Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985)). After the claimant was released to return to work, she was rehired on September 16, 2006 on a part-time basis per request. Accordingly, her separation is considered to be a voluntary quit without good cause attributable to the employer and benefits must be denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated September 14, 2006, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she 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 claimant is overpaid benefits in the amount of \$494.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs