

**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**

**KRISTINA M GRIMES  
1427 – 5<sup>TH</sup> AVE #5  
DES MOINES IA 50311**

**AVIATION GROUND SERVICES LTD  
C/o ADP UCM & JAMES E FRICK INC  
PO BOX 66744  
ST LOUIS MO 63166-6744**

**Appeal Number: 04A-UI-12903-HT  
OC: 10/24/04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

**STATEMENT OF THE CASE:**

The employer, Aviation Ground Services, Ltd., filed an appeal from a decision dated November 22, 2004, reference 01. The decision allowed benefits to the claimant, Kristina Grimes. After due notice was issued, a hearing was held by telephone conference call on December 28, 2004. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Manager Larry Frizzell and Supervisor of Risk Manager Marie Sullin.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kristina Grimes was employed by Aviation Ground Services from August 27, 2003 until September 24, 2004. She was a full-time aircraft cleaner.

On August 27, 2004, the claimant suffered a work-related injury. She was taken to the emergency room by Manager Larry Frizzell and was diagnosed with a sprained ankle. The employer received a fax from the doctor regarding her condition. Ms. Grimes was released to return to work with restrictions of using crutches in non-weight-bearing work for 2 to 3 days, then to wear a splint for 10 to 14 days. However, the claimant did not return to work. Mr. Frizzell did contact her and tell her that the drug screening had come back negative for any controlled substances, so there was no impediment in that respect to her returning to work, and light duty was available to meet the doctor's restrictions.

Supervisor of Risk Management Marie Sullin, talked to the claimant on the phone on September 17, 2004, and asked why the claimant did not return to work. Ms. Grimes thought she was off work for two weeks but Ms. Sullin read the doctor's note to her and said she could have returned to work immediately. The employer then referred the claimant to Concentra Medical Center and she was examined by a doctor on September 17, 2004. She was released to return to work immediately without restrictions, and the medical center sent a copy of the information to Ms. Sullin.

Ms. Sullin sent the claimant a certified letter on September 17, 2004, telling her she was expected to report to work no later than September 20, 2004, which she received on September 20, 2004. However, that was a regular day off for her, as her schedule was Wednesday through Sunday. She was no-call/no-show to work on September 22, 23, and 24, 2004, and was considered a voluntary quit.

Kristina Grimes has received unemployment benefits since filing a claim with an effective date of October 24, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes 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 24.25(4) provides:

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

The claimant was able to return to work, having been certified by two doctors that she was able to return to work. There is nothing in the record to establish why she did not return even though work was available to her. She was no-call/no-show to work for three days, which is a voluntary

quit under the provisions of the above Administrative Code section. The claimant had no reason not to return to work, as light duty was available to her per the initial restrictions, and full duty was available as of September 20, 2004. The record establishes the claimant did not have good cause attributable to the employer for quitting and she is disqualified.

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 claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of November 22, 2004, reference 01, is reversed. Kristina Grimes is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,243.00.

bgh/b