IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ALEXANDRIA NEWHARD
Claimant

COLLEGE COMMUNITY SCHOOL DISTRICT
Employer

APPEAL NO. 12A-UI-11168-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/27/12
Claimant: Respondent (2)

Iowa Code Section 96.5(1)(d) and (g) – Removal of Disqualification
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 13, 2012, reference 04, decision that allowed benefits effective August 19, 2012. After due notice was issued, a hearing was held on October 10, 2012. Claimant Alexandria Newhard participated. James Rotter, Board Secretary, represented the employer. Exhibits One through Nine, and Department Exhibits D-1 and D-2 were received into evidence.

ISSUES:

Whether Ms. Newhard has requalified for unemployment insurance benefits since voluntarily quitting her employment with College Community School District without good cause attributable to the employer. She has not.

Whether Ms. Newhard is overpaid benefits as a result of failing to requalify for unemployment insurance benefits. She has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Alexandria Newhard established a claim for unemployment insurance benefits that was effective May 27, 2012. On June 19, 2012, a workforce development representative entered the reference 01 decision to adjudicate Ms. Newhard's separation from employer, College Community School District. The decision denied benefits. The decision indicated the employer's account would not be charged. The decision indicated that Ms. Newhard had voluntarily quit on May 22, 2012 due to pregnancy. The decision concluded the quit was not caused by the employer. The decision further stated as follows:

> To have been eligible for benefits, you must have:
>
> 1. Left work on the advice of a licensed and practicing physician;
> 2. Notified your employer immediately;

3. Attempted to return to work after recovery was certified by a physician and was told by your employer that work was not available (or)
1. Earned wages for insured work equal to 10 (10) times her weekly unemployment benefit amount after your separation date; and
2. Meet all the other eligibility requirements.

The decision provided a June 29, 2012 deadline for appeal. Neither party appealed the June 19, 2012, reference 01 decision and it became a final agency decision binding upon the parties.

Ms. Newhard had in fact been off work since February 24, 2012 in connection with pregnancy related issues. Ms. Newhard had worked as a classroom paraprofessional. Ms. Newhard had been released to return to work without restrictions on February 10, 2012. Ms. Newhard did not return to work on February 10, 2012. Instead, Ms. Newhard called in absences each day until she had used up all available sick leave. On March 1, 2012, Amber Welch, Associate Principal at Prairie Creek Intermediate School, contacted James Rotter, Director of Business Services and Board Secretary for College Community School to seek guidance on what she should do with regard to Ms. Newhard's failure to return to work after being released by the doctor to return to work without restrictions. On March 1, Mr. Rotter responded with several questions and some guidance. Mr. Rotter asked whether Ms. Newhard had applied for or been approved for FMLA leave. Mr. Rotter asked when Ms. Newhard's baby was due. Mr. Newhard asked whether the school principal had been approving leave without pay. Mr. Rotter told Ms. Welch that if Ms. Newhard was not requesting leave other than the without pay, that Ms. Welch had the right to let her know that she was no longer able to perform the necessary functions of her job. Mr. Rotter qualified his statement by a saying he was not sure how the direction in which Ms. Welch would want to go.

On March 19, 2012, Mr. Rotter sent a letter to Ms. Newhard on the school district letterhead. The letter reads as follows:

The District office has been informed that you are requesting extended leave due to a serious medical condition. Additionally, it's my understanding that the District has requested that you provide documentation from your treating physician but has not received any since your Doctors excuse dated February 24, 2012. <u>Find enclosed a Department Of Labor notice that clarifies what is needed from you to continue your leave.</u> It's important that the needed documentation from your physician is received in the District Central Office by March 30, 2012. Your current leave, without documentation began on February 24, and may run up to 12 weeks which would be May 18, 2012 if approved by the District upon receipt. Any leave beyond that time would be subject to Board approval and require additional documentation from your treating physician.

If you wish to clarify your responsibilities further please don't hesitate to contact me. Please provide documentation to my attention as soon as possible from your treating physician.

Mr. Rotter attached an FMLA notice of eligibility and rights and responsibilities document. The FMLA document notified Ms. Newhard that she was eligible for FMLA leave to commence on February 24, 2012, provided that she submitted a signed and dated document from her treating physician that stated it was medically necessary for her to be gone from work from February 24, 2012 through her expected return date. The document indicated that FMLA leave could be approved for up to 12 weeks. The document provided March 30, 2012 as the deadline by which Ms. Newhard needed to submit the requested medical certification. The document indicated that Ms. Newhard would be required, every two weeks, to furnish the employer with periodic reports of her status and intent to return to work.

The employer did not hear anything back from Ms. Newhard in response to the March 19, 2012 letter. The employer had sent the letter by certified mail and Ms. Newhard had signed for the letter on April 2, 2012. After not hearing anything from Ms. Newhard, Mr. Ryder sent a second letter to Ms. Newhard on April 25, 2012. The second letter states as follows:

> This correspondence is a follow-up to my letter, sent registered mail on March 19, 2012 and signed for by you on April 2, 2012, concerning your extended absence without approved leave. In the March 19 letter I enclosed Family Medical Leave Act paperwork for you and your physician to complete and return to the District. As of today's date, those documents have not been received in our office and therefore, your absence is without approved leave. If received you may have approved leave up through May 18, which is fast approaching. Additionally leave beyond that time could be requested in writing and would be subject to Board approval but would require additional documentation from your treating physician and a written request from you. Additionally, I've called your cell phone number and left messages on April 18, April 19, and April 23. You returned a message to our district office at 9:14 pm on the 18th but did not leave indication of your intentions.
>
> Without written documentation on the approved FMLA forms and an additional leave request from you, which includes a Dr's note indicating that additional leave is necessary beyond the possible May 18th FMLA leave, I will be required to recommend to the Board that your employment status be terminated with the District effective immediately at their May 21, 2012 meeting. Additionally, your insurance coverage with the District will end effective May 19 due to your non-correspondence with the District. Charlie Zach will send you COBRA enrollment paperwork whereas you can continue insurance coverage at your expense.
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> If you wish to clarify your responsibilities further please don't hesitate to contact me at 848-5221.

The employer did not hear anything further from Ms. Newhard. Ms. Newhard obtained the May 21, 2012 school board meeting minutes from her mother, who also works for the school district, and those minutes indicated that the board was approving Ms. Newhard's termination from the employment. Ms. Newhard did not make any further contact with the employer.

Shortly thereafter, Ms. Newhard established the claim for unemployment insurance benefits that was effective May 27, 2012. When Ms. Newhard received her copy of the June 19, 2012, reference 01 decision that denied benefits based on a May 22, 2012 voluntary quit, she understood that she was disqualified for unemployment insurance benefits.

Ms. Newhard did not requalify for benefits by earning 10 times her weekly benefit amount through additional insured work. Ms. Newhard gave birth on June 10, 2012. Ms. Newhard did not return to the employer with proof that she had been released to return to work.

Ms. Newhard has so far received $2,772.00 in unemployment insurance benefits for the period of August 19, 2012 through November 10, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

Workforce Development rule 817 IAC 24.26(6)(a) provides as follows:

> Separation because of illness, injury, or pregnancy.
> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

Iowa Code section 96.5-1-g provides:

> An individual shall be disqualified for benefits:
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> 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:
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> g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The weight of the evidence in the record indicates that Ms. Newhard voluntarily quit effective February 24, 2012 by failing to report for work after that date and by failing to provide any meaningful response to the employer’s request for medical documentation supporting her need to be off work be on February 24, 2012. Despite this conclusion that there was a separation that occurred in February 2012, the administrative law judge and the parties are bound by the June 19, 2012 reference 01 decision. The weight of the evidence indicates that a workforce development representative misinterpreted that decision when he or she entered the September 13, 2012, reference 04 decision. There are additional problems with the September decision. First, the June 19, 2012, reference 01 decision did not make a finding that

Ms. Newhard had separated from the employment based on a serious medical condition or upon the advice of a physician. Ms. Newhard never provided such documentation to the employer and has not provided such documentation for the appeal hearing. Next, even if Ms. Newhard had voluntarily quit the employment due to a serious medical condition upon the advice of a physician, Ms. Newhard never contacted the employer with proof that she had been released to return to work and the employer never denied her additional employment after being presented with such proof. Thus, the alternative requalification that would apply in cases where there was a bona fide voluntary quit due to a non-work-related medical condition upon the advice of physician does not apply to Ms. Newhard. Instead, the only way Ms. Newhard could requalify for benefits is by working in and been paid wages equal to 10 times her weekly benefit amount after she separated from the employment. Ms. Newhard would also have to meet all other applicable eligibility requirements. An additional problem with the September 13, 2012, reference 04 decision is that it purports to be a decision affecting two parties, Ms. Newhard and the employer, but the employer was denied the opportunity to provide information to be considered in the decision-making process. The September 13, 2012, reference 04 decision was entered in error.

Ms. Newhard has not requalified for benefits after being disqualified for benefits based on a voluntary quit for personal reasons and with without good cause attributable to College Community School District. Ms. Newhard continues to be disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Newhard must also meet all other applicable eligibility requirements. The employer's account will not be charged.

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.
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> 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.

This is a requalification case, *not* a separation case. Accordingly, the potential waiver of recovery of overpaid benefits does not apply. The weight of the evidence indicates that Ms. Newhard has received $2,772.00 in unemployment insurance benefits for the period of August 19, 2012 through November 10, 2012. The weight of the evidence also indicates that Ms. Newhard was not eligible for the benefits she received. The benefits constitute an overpayment that Ms. Newhard must repay to Iowa Workforce Development.

DECISION:

The Agency representative's September 13, 2012, reference 04, decision is reversed. Since separating from the employment, the claimant has *not* requalified for benefits after being disqualified for benefits based on a voluntary quit for personal reasons and without good cause attributable to College Community School District. The claimant continues to be disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must also meet all other applicable eligibility requirements. The employer's account will not be charged. The claimant is overpaid $2,772.00 in unemployment insurance benefits for the period of August 19, 2012 through November 10, 2012.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs