

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

NICOLE D DEPENNING
136 – 36TH ST NE APT C
CEDAR RAPIDS IA 52402-6148

ROCKWELL COLLINS INC
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166

Appeal Number: 06A-UI-08064-HT
OC: 07/09/06 R: 03
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Rockwell Collins, Inc. (Rockwell), filed an appeal from a decision dated July 31, 2006, reference 01. The decision allowed benefits to the claimant, Nicole Depenning. After due notice was issued a hearing was held by telephone conference call on August 28, 2006. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Human Resources Specialist Trisha Olson.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Nicole Depenning was employed by Rockwell from February 3, 2005 until June 8, 2006. She was a full-time clerk.

The claimant's last day of work was Wednesday, June 7, 2006. On Monday, June 12, 2006, she submitted a written resignation to her supervisor, Blaine Conway. It only stated that she was quitting to explore new employment and that her last day of work would be June 23, 2006, and she would use her vacation up until that time. Company policy prohibits employees from using vacation to prolong employment and Human Resources Specialist Trisha Olson notified her of this, stating that her date of separation was officially June 8, 2006.

After she submitted her resignation on June 12, 2006, the claimant contacted the Ombudsman later in the day to register a complaint against her supervisor. The allegations were investigated and the complaint was determined to be "unfounded."

Nicole Depenning has received unemployment benefits since filing a claim with an effective date of July 9, 2006.

The record was closed at 1:15 p.m. At 2:45 p.m. the claimant called and requested to participate. She had received the notice of the hearing prior to the scheduled time and date but did not read and follow the instructions to provide a telephone number where she could be reached.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant quit work for reasons which would disqualify her from receiving unemployment benefits.

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 did not participate in the hearing to give any specific reasons for quitting. Her only information to the employer was that she was seeking opportunities elsewhere. The claimant has the burden of proof to establish she had good cause attributable to the employer for quitting under Iowa Code 96.6(2). She has failed to meet this burden of proof and is disqualified from receiving benefits.

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.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

DECISION:

The representative's decision of July 31, 2006, reference 01, is reversed. Nicole Depenning 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 \$2,004.00.

bgh/pjs