

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANGELA N WRIGHT
Claimant

QWEST CORPORATION
Employer

APPEAL 15A-UI-07499-DGT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/07/15
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 22, 2015, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 6, 2015. Claimant participated. Employer participated by Frankie Patterson, Hearing Representative. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 12, 2015. Claimant ended the employment on or about May 21, 2015 after not calling into work or showing up for work on May 18, 2015, May 19, 2015, and May 20, 2015.

Employer has a three day no-call/no-show policy which states that an employee that misses three consecutive scheduled days of work without calling in or showing up for work is considered a voluntary quit.

Employer tried to contact claimant during this prolonged period of absence, and claimant did not return to work. Claimant had moved, did not have a car, and was having problems keeping her phone service going during this time.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3,520.00, since filing a claim with an effective date of June 7, 2015, for the Eight weeks ending August 1, 2015. The administrative record also establishes that the employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she moved, and was having personal problems at home.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(4), (6) and (23) 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:

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

(6) The claimant left as a result of an inability to work with other employees.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. 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 if it is determined that they did participate in the fact-finding interview. Iowa Code

§ 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did not participate in the fact-finding interview the claimant is **not** obligated to repay to the agency the benefits she received and the employer's account shall be charged.

DECISION:

The decision of the representative dated June 22, 2015, (reference 01) is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$3,520.00, and is **not** obligated to repay the agency those benefits. The employer did not participate in the fact-finding interview and its account shall be charged.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/mak