

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALISHA M THOMAS**  
Claimant

**APPEAL NO. 14A-UI-12369-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VALUE PLACE PROPERTY MANAGEMENT**  
Employer

**OC: 11/02/14**  
**Claimant: Respondent (2)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 20, 2014, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on December 18, 2014. Claimant Alisha Thomas did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Farica Robertson represented the employer. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant and of the claimant's base period employers (DBRO).

The claimant contacted the Appeals Section after the hearing record had closed and after the employer had been dismissed from the hearing. The claimant had not provided a telephone number in response to the hearing notice instructions. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record. Iowa Admin. Code r. 871-26.14(7)(c). The claimant did not provide good cause to reopen the hearing record.

**ISSUES:**

Whether Ms. Thomas separated from the employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer of liability for benefits.

Whether Ms. Thomas has been overpaid benefits.

Whether Ms. Thomas must repay benefits.

Whether the employer's account may be charged for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Alisha Thomas was employed by Value Place Property Management as part-time guest attendant at the employer's extended stay hotel in Pleasant Hill. The employment began in January 2014

and ended on October 24, 2014, when Ms. Thomas voluntarily quit in response to a reprimand. Ms. Thomas' immediate supervisor was Farica Robertson, General Manager. On October 24, 2014, Ms. Thomas was scheduled to work from 5:00 p.m. to 10:00 p.m. Early in the shift, Ms. Robertson notified Ms. Thomas that she would need to meet with Ms. Thomas during the shift for the purpose of reviewing with and issuing to Ms. Thomas a counseling form. The counseling form concerned Ms. Thomas leaving her shift on October 22, 2014 without completing assigned laundry duties. Laundry duties were part of Ms. Thomas' regular duties. The counseling form indicated that Ms. Thomas needed to be caught up with laundry duties before she left the workplace at the end of her shift. During the shift Ms. Thomas came to Ms. Robertson and indicated she was ready to commence their meeting. At the time, Ms. Robertson was in the middle of counting a cash drawer. Ms. Robertson asked Ms. Thomas to wait a few minutes so that Ms. Robertson could finish counting the cash drawer. Ms. Thomas left the front desk area where Ms. Robertson was counting the cash drawer and went to the laundry room. Ms. Thomas returned to the front desk area, left her work keys at the front desk, and then left the workplace. This occurred sometime between 6:00 p.m. and 6:30 p.m., well before the end of Ms. Thomas's scheduled shift. Ms. Thomas took her personal effects with her.

Ms. Robertson made two attempts to contact Ms. Thomas after Ms. Thomas walked out. At the time of the calls, Ms. Robertson was still open to continuing the employment. Ms. Robertson left two voicemail messages for Ms. Thomas. As part of the final message Ms. Robertson left for Ms. Thomas, she told Ms. Thomas that she needed to hear from Ms. Thomas by 4:00 p.m. on October 25, 2014. When Ms. Robertson did not hear from Ms. Thomas by 4:00 p.m., she processed paperwork documenting Ms. Thomas' separation from the employment. Later that day, Ms. Thomas contacted the area manager to ask when she could return to work. The area manager told Ms. Thomas it was too late. Ms. Thomas returned her work uniform shirts to the workplace later that day.

Ms. Thomas established a claim for unemployment insurance benefits that was effective November 24, 2014. Ms. Thomas has received \$708 in benefits for the six weeks between November 2, 2014 through December 13, 2014. Value Place Property Management was Ms. Thomas' sole base period employer. Ms. Robertson participated in and represented the employer at the November 19, 2014 fact-finding interview.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Ms. Thomas voluntarily quit the employment in response to being reprimand. Ms. Thomas indicated her intention to quit the employment by leaving prior to the scheduled end of her shift without permission, by leaving her keys at the front desk, by taking her personal effects, and by failing to respond in a timely manner to the voicemail messages the employer left for her. The employer reasonably concluded that Ms. Thomas had quit the employment. The quit in response to the reprimand was without good cause attributable to the employer. Accordingly, Ms. Thomas is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because this employer was Ms. Thomas' sole base period employer, there are no other base period wage credits upon which reduced benefits might be based. Ms. Thomas is subject to the full disqualification.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

Ms. Thomas received benefits but has been denied benefits as a result of this decision. The \$708 in benefits that Ms. Thomas received for the six weeks between November 2, 2014 and December 13, 2014 constitutes an overpayment of benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid or future benefits.

#### **DECISION:**

The November 20, 2014, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for

benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid \$708 in benefits for the six weeks between November 2, 2014 and December 13, 2014. The claimant must repay the overpayment. The employer's account will not be charged for benefits already paid or for future benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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