

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKIE L PERRY
Claimant

APPEAL NO. 10A-UI-01712-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIG MEADOWS
Employer

OC: 02/01/09
Claimant: Respondent (2)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 28, 2010, reference 04, that concluded the claimant was able to and available for work. A telephone hearing was held on March 11, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Pat Boomgarden participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show: (1) The claimant filed a claim for unemployment insurance benefits effective February 1, 2009. She filed an additional claim for benefits effective September 6, 2009, but in a decision dated October 1, 2009, she was denied benefits because she was unable to work due to an injury. (2) The claimant submitted a doctor's note to the Agency dated January 27, 2010, that stated "May return to work light-duty restriction. 10 lbs. weight restriction. No weight over shoulder height." If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer as a certified nurse's aide from June 6, 2008, to August 9, 2009. She worked at the employer's long-term care facility in Illinois. After August 9, 2009, the claimant was off work due to a non-work-related injury with a doctor's slip.

The claimant brought in a doctor's slip on September 3 stating that she would work light-duty, but could not use her left arm. She was informed that she could return to work when she was released for full duty.

The claimant filed a claim for unemployment insurance benefits effective February 1, 2009. She filed an additional claim for benefits effective September 6, 2009, but in a decision dated

October 1, 2009, she was denied benefits effective September 6 because she was unable to work due to an injury.

The claimant did not have any communication with the employer again until sometime during the week of January 24, 2010. She came to the facility and asked if she could be rehired. She did not present any information about her medical condition. The administrator reviewed the claimant's past work record and informed her that she would not be rehired because of a history of poor work performance.

The claimant submitted a doctor's note to the Agency dated January 27, 2010, that stated "May return to work light-duty restriction. 10 lbs. weight restriction. No weight over shoulder height." The claimant went to her local Workforce Development Center on January 27, 2010, with the doctor's note and requested the disqualification for being unable to work be removed.

The claimant filed for and received a total of \$148.00 in unemployment insurance benefits for the week ending January 30, 2010.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that individual is qualified to receive benefits if she: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that she needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but her regular work or comparable suitable work was not available. Iowa Code section 96.5-1-d.

The claimant is subject to disqualification effective January 24, 2009, because she had not satisfied the conditions of eligibility under Iowa Code section 96.5-1-d. The rules state "Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment." 871 IAC 24.26(6)a. Based on the facts presented, the claimant had almost the same restrictions on January 27, 2010, that she had in September 2009, for which she was disqualified for being unable to work. She definitely had not recovered sufficiently to perform all of her previous job duties as a CNA.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated January 28, 2010, reference 04, is reversed. The claimant is disqualified from receiving unemployment insurance benefits effective January 24, 2010, and continuing until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs