

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

KRISTA KELLEY  
108 N 1<sup>ST</sup> ST  
OSKALOOSA IA 52577-2812

MAHASKA COUNTY HOSPITAL  
ATTN ADMINISTRATOR  
1229 C AVE E  
OSKALOOSA IA 52577

**AMENDED**

Appeal Number: 06A-UI-06982-BT  
OC: 06/18/06 R: 03  
Claimant: Respondent (2R)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Mahaska County Hospital (employer) appealed an unemployment insurance decision dated July 6, 2006, reference 01, which held that Krista Kelley (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 31, 2006. The claimant participated in the hearing. The employer participated through Dave Leighton, Human Resources Director and Kim Langfitt, Human Resources Assistant. Employer's Exhibits One through Four were admitted into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time registered nurse from May 7, 2004 through June 26, 2006, when she effectively voluntarily quit her employment. She requested and was granted leave under the Family Medical Leave Act to enter court ordered substance abuse treatment. The leave began April 3, 2006 and she was scheduled to return to work on June 26, 2006, with a return to work release from her treating care provider. The claimant went to a treatment center in Ottumwa, Iowa until her insurance ran out and she was transferred to Mecca in Iowa City on April 19, 2006. She walked out of treatment at Mecca against medical advice on April 25, 2006. Mecca subsequently referred her to continue treatment at the Mahaska County Hospital in Oskaloosa at its outpatient treatment center called New Directions.

It is unknown how much or how well the claimant complied in the New Directions outpatient treatment program. What is clear is that the human resources assistant had seven documented discussions with the claimant in May 2006 in which she was reminded she needed the return to work release before she could return to work. These telephone discussions occurred on May 5, 8, 18, 21, 22, 23, and 25. Additionally, the human resources director personally met with the claimant on June 20, 2006 and specifically advised her that her FMLA leave expires on June 26, 2006. She was informed that unless she provided the release from her healthcare provider prior to the close of business on June 23, 2006, she would be considered to have voluntarily quit her position. The claimant failed to turn in a release, did not return to work on June 26 but returned to work on June 27, 2006 without a release. She was told she had to leave as the employer considered her to have voluntarily quit her employment as of June 26, 2006.

The claimant filed a claim for unemployment insurance benefits effective June 18, 2006 and has received benefits after the separation from employment.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by not providing the employer with a return to work release. The claimant was aware at the time she requested leave under the Family Medical Leave Act that she would have to provide a return to work release by the treating physician prior to returning to work. She was attending a court

ordered substance abuse treatment program and dropped out against medical advice and with the knowledge that she would not be given a release if she did not finish the program. It was only as a result of her own actions that she did not obtain her return to work slip. The facts of this case should be differentiated between claimants, who through no fault of their own, are medically unable to return to work.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. She has not satisfied that burden and benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated July 6, 2006, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,396.00. The issue as to whether the claimant was able and available for work effective June 18, 2006, is remanded to the Claims Section.

sda/pjs/pjs