

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA J HYDEN
Claimant

APPEAL NO. 06A-UI-10095-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRISTINE D CORCORAN FRYE
Employer

**OC: 09-10-06 R: 02
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 4, 2006, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 31, 2006. Claimant did not participate but called after the hearing record had been closed and had not followed the hearing notice instructions pursuant to 871 IAC 26.14(7)a-c. Employer participated through Kristine Corcoran Frye.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant received the hearing notice prior to the October 31, 2006 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the claimant directly contacted the Appeals Section was on October 31, 2006, after the scheduled start time for the hearing and after the hearing record had been closed. She had not read all the information on the hearing notice, and had assumed that the Appeals Section would initiate the telephone contact even without a response to the hearing notice.

Claimant was employed as a full-time receptionist/office assistant from February 2006 until September 8, 2006 when she quit. Employer switched from BC/BS health insurance to United Health Care on July 17, 2006. Her prescription care was not honored because she presented her BC card to Walgreen's instead of UHC. There was a computer glitch early September 2006 for the prescription card and employer was attempting to resolve the matter with UHC but claimant wanted to call the insurance agent. Employer told her not to call the agent, went into her office and closed the door since employer smokes in her office. The issue was resolved and employer reimbursed claimant for the additional cost of prescriptions. While employer was

on vacation from July 20 through August 10, 2006 there was no money transferred into the payroll account by mistake so payroll checks were not honored. Upon discovering the error, employer wrote a check immediately and offered to cover bank charges. Employer might have been short with her after she talked about irrelevant personal things before telling employer she had a client on the phone to transfer. Claimant knew from her hire that the office was a smoking office and she did not raise the issue before leaving or provide relevant medical information to employer. Employer did not intend for claimant to quit and continued work was available. Claimant never told employer she was thinking about quitting. On September 7, claimant said good night and employer said, "See you tomorrow." Claimant called in sick on Friday and never called or reported for work thereafter. Employer received the certified letter of resignation on September 8 after claimant had called in sick.

Claimant has received unemployment benefits since filing a claim with an effective date of September 10, 2006.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied.

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.

The first time the claimant called the Appeals Section for the October 31, 2006 hearing was after the hearing had been closed. Although she may have intended to participate in the hearing, she failed to read or follow the hearing notice instructions and did not contact the Appeals Section as directed prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

For the reasons that follow, the administrative law judge concludes claimant voluntarily left her employment without good cause attributable to the employer.

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.

871 IAC 24.25(6), (21) and (22) provide:

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 § 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 § 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:

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

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). In medical resignations, the claimant must first give the employer notice of the problem and an opportunity to remedy it in order for the voluntary quit to fall within a qualifying separation. *Suluki v. EAB*, 503 N.W.2d 401 (Iowa 1993).

Employer resolved all issues of which she was aware (health insurance and payroll check) and claimant did not raise other issues with employer or otherwise indicate she had concerns that might lead her to quit her job. Thus, claimant's decision to quit was without good cause attributable to the employer. Benefits are denied.

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

DECISION:

The October 4, 2006, reference 01, decision is reversed. Claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Claimant is overpaid benefits in the amount of \$1,736.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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