

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MINDY M SOUTHWICK**  
Claimant

**APPEAL 21A-UI-05834-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACKSON RECOVERY CENTERS INC**  
Employer

**OC: 02/16/20**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

**STATEMENT OF THE CASE:**

Jackson Recovery Centers Inc., the employer/appellant, filed an appeal from the February 9, 2021, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 29, 2021. The employer participated through Jessica Ward, human resources specialist. Ms. Southwick participated and testified. Official notice was taken of the administrative record. Employer's Exhibit 1 was admitted into evidence.

**ISSUES:**

Was Ms. Southwick laid off, discharged for disqualifying job-related misconduct, or did she voluntarily quit without good cause attributable to the employer?  
Was Ms. Southwick overpaid benefits?  
If so, should she repay the benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Southwick began working for the employer on June 16, 2017. She worked as a full-time cook. Her employment ended on February 15, 2020 when the employer eliminated her position.

The employer decided to outsource its food service. On January 15, 2020, the employer had a meeting with Ms. Southwick and her three co-workers to let them know about their employment. On January 17, 2020, Ms. Southwick acknowledged receiving a memo dated January 15, 2020 from the employer about her employment. The memo informed Ms. Southwick that the new food service vendor is Morrison Food Service, that Morrison will take over on February 16, 2020, that the employer will eliminate the position in which she worked effective February 15, 2020 and that all of her benefits with the employer will end on February 15, 2020. The memo also informed Ms. Southwick that Morrison representatives would be onsite the following week with information about how she could apply for employment with Morrison. The employer and

Morrison staff told Ms. Southwick that she would have to apply to Morrison, go through a background check, and receive and accept an offer to work for Morrison.

Ms. Southwick did not apply to work at Morrison because no one from Morrison contacted her, because a manager she worked with for the employer that she did not get along would be working at Morrison and because she saw that Morrison had already hired her three co-workers and another person. Ms. Southwick assumed that Morrison had replaced her position with the other person.

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

For the reasons that follow, the administrative law judge concludes Ms. Southwick was laid off due to lack of work.

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. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

In this case, the employer did not have work for Ms. Southwick to do since it eliminated the position in which she worked effective February 15, 2020. The employer thought of the situation as a transfer of Ms. Southwick from her position with the employer to a position with Morrison. But the employer did not have the power to do that. To get a job with Morrison, Ms. Southwick would have had to apply with that employer and go through a background check. Ms. Southwick did not apply to Morrison, as is her right, and Morrison made no offer to work to Ms. Southwick. Ms. Southwick's separation from employment was attributable to a lack of work by the employer. Ms. Southwick did not quit and she was not discharged. Benefits are allowed.

Since Ms. Southwick is eligible for benefits, the issues of repayment and chargeability are moot.

**DECISION:**

The February 9, 2021, (reference 03) unemployment insurance decision is affirmed. Ms. Southwick was laid off due to a lack of work. Benefits are allowed, provided she is otherwise eligible.



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May 5, 2021  
Decision Dated and Mailed

dz/scn