

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARVEONCE T MITCHELL
Claimant

APPEAL NO. 09A-UI-05182-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO
Employer

**Original Claim: 07/27/08
Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Sears, filed an appeal from a decision dated March 23, 2009, reference 06. The decision allowed benefits to the claimant, Arveonce Mitchell. After due notice was issued, a hearing was held by telephone conference call on April 29, 2009. The claimant participated on her own behalf. The employer participated by Human Resources Manager Bridget Clark, Sales and Service Manager Fred Hoffman, and Team Manager Theo Harlan.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Arveonce Mitchell was employed by Sears from August 11, 2008 until February 12, 2009 as a full-time customer service representative. Her last day of work was December 15, 2008, and after that she was either no-call/no-show to work or called in with various medical problems. On December 31, 2008, the employer sent her paperwork to be filled out so she could apply for a leave of absence. The paperwork was due no later than January 15, 2009, but she submitted it January 19, 2009, and the employer accepted it. It stated she was to return to work on January 29, 2009.

The claimant spoke with the human resources assistant, Nikki, on January 27, 2009, and assured her she would return to work as scheduled January 29, 2009. Ms. Mitchell did indicate she would need some “accommodations” because of her knee injury and a recently discovered pregnancy, and would have to be able to get up and walk around periodically. Nikki told her to provide documentation from her physician and Sears would do what was needed.

Ms. Mitchell was no-call/no-show to work on January 29, 2009. Sears sent her a letter notifying her she was not approved for any extra leave and was to return to work February 12, 2009. She was no-call/no-show to work on that date and the employer sent her a letter notifying her she was terminated for failing to return to work.

The employer also had concerns regarding the medical documentation Ms. Mitchell had submitted. First of all, the address for the doctor’s office was found to be a parking lot, not an office, and the doctor was a pediatrician. Human Resources Manager Bridget Clark called the doctor’s office and

asked whether adults were treated in that practice and was told no one over the age of 18 would be a patient. In addition, the documentation discussed treating the claimant's knee injury, and the employer was told the doctor does not treat injuries of that type regardless of the age of the patient. Ms. Clark also felt the handwriting on the alleged doctor's statement looked suspiciously like Ms. Mitchell's handwriting, but never had the opportunity to inquire fully into the documentation.

Ms. Mitchell finally came into the office on February 17, 2009, at which time she was notified she was no longer an employee due to her failure to return to work or provide the necessary documentation to extend her leave.

Arveonce Mitchell has received unemployment benefits since filing an additional claim with an effective date of February 15, 2009.

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.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The claimant was given the opportunity to return to work or to provide additional documentation from a physician extending her leave. She failed to do either of these. After both of her proposed return-to-work dates came and went, no documentation from her physician had been received, either to extend her leave of absence or document the needed accommodations. Her failure to return to work after the approved leave of absence is considered a voluntary quit without good cause attributable to the employer under the provisions of the above Administrative Code section. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of March 23, 2009, reference 06, is reversed. Arveonce Mitchell is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw