

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RYAN T WHITE**  
Claimant

**APPEAL NO. 08A-UI-06832-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALGREEN CO**  
Employer

**OC: 06/22/08 R: 02**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Walgreen Company filed a timely appeal from an unemployment insurance decision dated July 18, 2008, reference 01, that allowed benefit to Ryan T. White. After due notice was issued, a hearing was begun on August 11, 2008. Mr. White participated on his own behalf and Jennifer Andres testified for the employer which was represented by Kathy Lauritzen of TALX UC eXpress. The hearing was concluded on August 26, 2008 with the same participants.

**ISSUES:**

Was the claimant's separation from employment a disqualifying event? Has the claimant been overpaid?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Ryan White began his employment with Walgreen Company on August 17, 2004. By the spring of 2008 he was a senior certified pharmacy technician. Mr. White was unhappy with a staff pharmacist at the location at which he was employed. The pharmacist in question has been counseled on several occasions because of her treatment of Mr. White and other pharmacy technicians.

Mr. White scheduled vacation for June 4, through June 15, 2008. Before leaving for vacation he told Store Manager Jennifer Andres that he was not certain if he wanted to return to work for the company at that location. He and Ms. Andres had previously spoken about a transfer. Ms. Andres had told Mr. White to find a store in need of a pharmacy technician or financially able to add another pharmacy technician to their staff. Mr. White did not provide the name of any such store to Ms. Andres.

Before Mr. White went on vacation, Ms. Andres told him that she would not put him back on the schedule until he contacted her or the pharmacy manager with his intentions. Near the end of the vacation, Mr. White spoke to a staff pharmacist, not his supervisor, and found that he had

not been placed on the schedule. He did not contact either the pharmacy manager or Ms. Andres. He filed a claim for unemployment insurance benefits effective June 22, 2008 and has received benefits since that time.

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

In the present case, no words of separation were spoken. Mr. White did not tell Ms. Andres that he quit, and Ms. Andres did not tell Mr. White that he was discharged. The intent of the parties must be inferred, therefore, from their actions. Further complicating this analysis is the fact that Mr. White and Ms. Andres have very different recollections of the conversations immediately preceding Mr. White's vacation.

The parties agree that Ms. Andres told Mr. White that she would not put him back on the schedule. Ms. Andres recalls that that decision was not permanent and irrevocable but only until Mr. White advised her of his intentions. To this administrative law judge, Ms. Andres' statements seem plausible. Mr. White interpreted the statement as a discharge. Despite this, however, he did not immediately file a claim for unemployment insurance benefits, waiting instead until the week of June 22, 2008, approximately a week after his vacation was over. This indicates to the administrative law judge that Mr. White was evaluating his options. The fact that he did not contact Ms. Andres or the pharmacy manager requesting to be re-activated is an action consistent with a voluntary quit.

The question then becomes whether the resignation was for good cause attributable to the employer. The administrative law judge concludes that it was not.

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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. While an individual may receive unemployment insurance benefits after resigning because of intolerable or detrimental working conditions, a resignation for general dissatisfaction with the work environment or because of inability to work with a co-worker is a disqualifying resignation. See 871 IAC 24.26 and 871 IAC 24.25(21) and (6), respectively. While Mr. White used terms such as "hostile environment" and "harassment," his description of events points to an underlying personality conflict with one of the staff pharmacists at the location. The evidence does not establish working conditions so deleterious as to constitute intolerable or detrimental working conditions. Benefits must be withheld.

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 insurance benefits since filing his claim during the week of June 22, 2008. The question of whether the benefits must be repaid is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated July 18, 2008, reference 01, is reversed. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of whether the claimant must repay the benefits he has received is remanded to the Unemployment Insurance Services Division.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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