

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA A COLEMAN**  
Claimant

**APPEAL NO. 08A-UI-06345-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIRE MOUNTAIN RESTAURANTS INC**  
Employer

**OC: 06/08/08 R: 04  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated July 2, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 24, 2008. Employer participated by Ben Martin, General Manager. Claimant failed to respond to the hearing notice and did not participate. Exhibit One was admitted into evidence.

Claimant called after the hearing was over to request participation. Claimant called late because she failed to read and follow the directions on the hearing notice.

**ISSUE:**

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 24, 2008. Claimant stopped coming to work. Claimant came back after two weeks of missed shifts to ask for her job back. Claimant had no explanation as to why she missed the work. Claimant did not call in to report she would be absent.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge holds that the evidence has established that claimant voluntarily quit without good cause attributable to the employer when claimant terminated the employment relationship because of job abandonment. Missing two weeks of scheduled shifts is a quit without cause attributable to employer. The failure to report the absences indicates this is a voluntary resignation. Benefits withheld.

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 next issue concerns an overpayment of unemployment insurance benefits.

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.

The administrative law judge holds that claimant is overpaid unemployment insurance benefits in the amount of \$475.00 pursuant to Iowa Code section 96.3-7 because a decision has determined claimant is ineligible to receive benefits due to a voluntary quit without good cause attributable to employer.

Since claimant has been disqualified for the receipt of unemployment insurance benefits, the claim shall be locked until claimant has re-qualified or is otherwise eligible.

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.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

**DECISION:**

The decision of the representative dated July 2, 2008, reference 01, is reversed. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant is overpaid unemployment insurance benefits in the amount of \$475.00. Claimant's request to reopen the record is denied.

---

Marlon Mormann  
Administrative Law Judge

---

Decision Dated and Mailed

mdm/pjs