

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AIMEE P CICCARELLI
Claimant

APPEAL NO. 11A-UI-02674-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN BLUE RIBBON HOLDINGS
Employer

OC: 01/23/11
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

American Blue Ribbon Holdings filed an appeal from a representative's decision dated February 22, 2011, reference 01, which held that no disqualification would be imposed regarding Aimee Ciccarelli's separation from employment. After due notice was issued, a hearing was held by telephone on March 29, 2011. The employer participated by Mark Poulos, General Manager, and was represented by Tom Kuiper of Talx Corporation. Ms. Ciccarelli did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Ciccarelli was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ciccarelli began working for American Blue Ribbon Holdings on October 13, 2009. She worked approximately 25 hours each week as a hostess. She failed to report for work and did not contact the employer on March 26, 2010. She did not contact the employer at any point after that date regarding her employment. She had not complained about any work-related matters before the separation. Continued work would have been available if Ms. Ciccarelli had continued reporting for work.

Ms. Ciccarelli filed a claim for job insurance benefits effective January 23, 2011. She has received a total of \$1,161.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

Ms. Ciccarelli abandoned her job when she stopped reporting for available work as of March 26, 2010. As such, her separation was a voluntary quit. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code § 96.5(1). Ms. Ciccarelli did not participate in

the hearing to explain why she stopped going to work. The evidence of record does not establish any good cause attributable to the employer for the separation. Accordingly, benefits are denied.

Ms. Ciccarelli has received benefits since filing the claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code § 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated February 22, 2011, reference 01, is hereby reversed. Ms. Ciccarelli left her employment without good cause attributable to the employer. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to claims to determine the amount of any overpayment and whether Ms. Ciccarelli will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs