

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SOUMOUNTHA LOVANH
Claimant

APPEAL NO: 12A-UI-15069-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IMAGE INC
MOLLY MAID**
Employer

**OC: 11/11/12
Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Molly Maid (employer) appealed an unemployment insurance decision dated December 14, 2012, reference 01, which held that Soumountha LoVanh (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2013. The claimant participated in the hearing. The employer participated through Owner Tammy Huinker. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time associate on February 13, 2012 and quit on May 25, 2012. She subsequently called the employer, apologized and asked to return to her job so was rehired on May 30, 2012. The claimant requested to go part time on September 3, 2012 and worked through September 17, 2012. She missed work the next two days and requested a leave of absence on September 20, 2012 due to the illness of a family member.

The claimant returned to work full time on October 17, 2012 and worked the rest of that week. She worked a partial shift on October 22, 2012 and went home ill. If an employee is going to be absent, they are required to call the employer before 7:45 a.m. and are required to call each day they are going to be absent. The claimant was a no-call/no-show on October 23, 2012 and the employer tried unsuccessfully to contact her. The employer eventually spoke with the claimant's sister later and learned the claimant was admitted to the hospital. The claimant

never called the employer but her husband went to the office to pick up her check on October 26, 2012. The employer asked the claimant's husband to have her call in and he said he would.

The employer continued to have no contact from the claimant but her husband again went to the office on November 2, 2012 to retrieve the claimant's check from her last day on October 22, 2012. The employer asked him about the claimant and he said she was home recovering. The employer again asked him to tell her to call the employer and he said he would. The claimant finally called the employer on Friday, November 9, 2012 and asked about returning to work. Lisa returned the call to the claimant but could not reach her and the claimant called back and spoke with Lisa. Lisa told the claimant that as of that day, there was no work on the following week but something could change and the claimant asked them to at least give her a day's notice. Lisa advised that sometimes that was not possible but she also told the claimant there was work available the week of Thanksgiving and the claimant said okay.

Lisa called the claimant on Tuesday, November 13, 2012 to let her know there was work available on November 14, 15, 19, 20 and 21. A message had to be left as the claimant did not answer but Lisa called her twice and even texted her without a response from the claimant. The employer never heard from the claimant and received a notice of claim confirming she filed an unemployment insurance claim effective November 11, 2012.

The claimant contends her last day of work was October 18, 2012 but the employer presented wage records confirming she was paid through October 22, 2012. The employer continues to have full-time work available and notified the claimant of this fact at the fact-finding interview and at the appeal hearing. The claimant said she does not want to work for the Ankeny Molly Maid so the employer told her that there was full-time work available at the Johnston Molly Maid if she wanted to work.

The claimant filed a claim for unemployment insurance benefits effective November 11, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to call or report to work both before and after November 9, 2012 even though continuing work was available.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden. Benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an

overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated December 14, 2012, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/tll