

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CHARLOTTE M WRAY
2916 WALKER ST
DES MOINES IA 50317

HAWKEYE HEALTH SERVICES INC
PO BOX 600
KNOXVILLE IA 50138

CHARLOTTE M WRAY
1727 S 18TH ST
CENTERVILLE IA 52544

Appeal Number: 04A-UI-01335-HT
OC: 12/28/03 R: 02
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Able and Available
Section 96.5-1 – Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Hawkeye Health Services, Inc. (Hawkeye), filed an appeal from a decision dated February 2, 2004, reference 01. The decision allowed benefits to the claimant, Charlotte Wray. After due notice was issued, a hearing was held by telephone conference call on February 27, 2004. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Clinical Supervisor Julie Swett.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Charlotte Wray began employment with Hawkeye on October 3, 2002. She was a part-time home health aide.

Ms. Wray filed a claim for unemployment benefits with an effective date of December 28, 2003. She had not been scheduled to work that week because her clients had called and complained about her being absent and no-call/no-show for her visits. Clinical Supervisor Julie Swett was on vacation and the scheduler was not able to consult with her regarding what to do about the complaints. The scheduler did not put Ms. Wray on the schedule for the week ending January 3, 2003.

When Ms. Swett returned, she met with the claimant on January 5, 2004, issued a disciplinary action, and put her back on the scheduled immediately. On January 12, 2004, Ms. Wray called her supervisor and said she had to quit for "personal problems."

Charlotte Wray has received unemployment benefits since filing a claim with an effective date of December 28, 2003.

The record was closed at 8:09 a.m. At 9:58 a.m. the claimant called and requested to participate. She stated she had received the notice of the hearing prior to the day it was scheduled, but had not read the instructions to call the Appeals Bureau immediately and provide a telephone number where she could be reached on the day of the hearing.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is able and available for work.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant was employed in the same capacity during the first two weeks of her unemployment claim as she had been throughout the course of her employment. She is therefore able and available for work, and the employer's account will not be charged with benefits paid to her during that first week.

The next issue is whether the claimant is disqualified. The judge concludes she is.

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.

Ms. Wray voluntarily quit her employment with Hawkeye for "personal reasons." The record does not establish what these reasons were, but there is no indication they are related to her employment. The quit cannot be considered to have been for good cause attributable to the employer and the claimant is disqualified.

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 claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

The next issue is whether the record should be reopened. The judge concludes it should not.

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.

The first time the claimant called the Appeals Section for the February 27, 2004 hearing was after the hearing had been closed. Although the claimant may have intended to participate in the hearing, the claimant failed to read or follow the hearing notice instructions and did not contact the Appeals Section as directed prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The Iowa Supreme Court has agreed, in Frahm v. EAB, (Unpublished, November 2003), that the agency rule stating that failure to read and follow the instructions on the notice of the hearing is not good cause to reopen the record. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

DECISION:

The representative's decision of February 2, 2004, reference 01, is modified in favor of the appellant. Charlotte Wray is eligible for benefits for the week ending January 10, 2004. The employer's account will not be charged for benefits paid during those weeks.

However, the claimant is disqualified beginning with the week ending January 17, 2004 and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$732.00.

bgh/b