

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINAMEN RIVERA
Claimant

APPEAL NO: 12A-UI-01020-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

**OC: 12-18-11
Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 12, 2012, reference 01, decision that allowed benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on March 13, 2012. The claimant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Turkessa Newsone, Human Resources Generalist, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service representative for Apac Customer Services of Iowa from February 10, 2011 to December 8, 2011. The claimant was a no-call/no-show November 28, December 2 and 3 or 4, 2011. She called in and stated she would be absent November 29, 2011, because she needed x-rays and November 30 and December 1, 2011, because her daughter was ill. The employer uses a no-fault attendance policy and between the occurrences assessed for the three days she called in and the three no-call/no-shows the claimant's employment would normally have been terminated or considered a voluntary quit but her supervisor pled her case and asked that she be allowed another chance. The employer agreed the claimant could have a second chance but when her supervisor informed her of the decision and told her she could not have any occurrences in the next 30 days, with or without a doctor's excuse, or her employment would be terminated the claimant indicated she could not meet those expectations and resigned her position with the employer.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant did not participate in the hearing and provide a good cause reason for her absences and her decision to leave her employment when the employer gave her a second chance following her three reported absences and three no-call/no-show absences within the period of seven days. The claimant has not demonstrated that her leaving was due to unlawful, intolerable or detrimental working conditions as those terms are defined by Iowa law. Consequently, she has not met her burden of proving her leaving was for good cause attributable to the employer. Therefore, benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The January 12, 2012, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was

not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css