

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINA M RINCON**

Claimant

**APPEAL NO. 08A-UI-09094-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES STAFFING SERVICES INC**

Employer

**OC: 02/10/08 R: 02  
Claimant: Respondent (2)**

Section 96.5-1-d – Voluntary Quit for Medical Reasons

Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

DES Staffing Services (employer) appealed a representative's October 6, 2008 decision (reference 03) that concluded Christina Rincon (claimant) was eligible to receive unemployment insurance benefits based on her separation from work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 22, 2008. The claimant provided a telephone number for the hearing but could not be reached at the number. She, therefore, did not participate in the hearing. The employer participated by Amy MacGregor, Human Resources Manager.

**ISSUE:**

The issue is whether the claimant is denied unemployment insurance benefits because she voluntarily quit work without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from May 1 through June 24, 2008. She signed a document on April 3, 2008, indicating that she was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The claimant was assigned to work at Weyerhaeuser on June 24, 2008. She worked for 5.25 hours and then told the employer she could not continue because her feet hurt. On June 26, 2008, she sought reassignment but no work was available.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work because her feet hurt, but not under the advice of her physician. The employer consented to her leaving. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive 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 claimant has received benefits since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's October 6, 2008 decision (reference 03) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,742.14.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw