

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY A MORK
Claimant

APPEAL NO: 10A-UI-02852-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 12/27/09
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(21) – Work Environment
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated February 9, 2010, reference 02, that held she was not discharged for misconduct on December 19, 2009, and benefits are allowed. A telephone hearing was held on April 6, 2010. The claimant did not participate. Michael Nicholosi, Branch Manager, participated for the employer.

ISSUES:

Whether claimant voluntarily quit with good cause attributable to the employer.

Whether claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the claimant and having considered the evidence in the record, finds: The claimant began working on assignment for her temporary employer on June 8, 2009. The claimant worked on assignment at Red Wheel Fundraiser as a packaging employee from September 2 to December 19, 2009. The claimant notified the employer she could not report to work on assignment, and she was replaced. The employer offered the claimant another assignment on December 20 that she refused. The claimant continued to reject assignments until she contacted the employer and was put on assignment at Iowa Western Community College beginning January 12, 2010. This assignment ended January 26.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(21) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

The administrative law judge concludes that the claimant voluntary left her ongoing assignment effective December 19, 2009, and her continuing rejection of work is without good cause attributable to her employer.

The claimant's employment separation was a voluntary leaving from an ongoing assignment that required the employer to replace her. Her continuing rejection of further work assignments is a voluntary period of unemployment that disqualifies her from receiving benefits. If the claimant believes she has requalified by earning ten times her weekly benefit amount on or after December 27, 2009, she should provide proof of these earnings to the department. While the claimant performed a work assignment from January 12 to January 26, there is no proof of earnings.

The administrative law judge further concludes the claimant's separation from employment on January 26, 2010 is remanded to Claims for fact finding.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue

of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant has received benefits, the overpayment issue is remanded to Claims.

DECISION:

The department decision dated February 9, 2010, reference 02, is reversed. The claimant voluntarily left without good cause attributable to her employer on December 19, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue and January 26, 2010 separation issues are remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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