

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROXANNE BISBEE**  
Claimant

**APPEAL NO: 09A-UI-14875-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHENKER LOGISTICS INC**  
Employer

**OC: 08/16/09**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

Schenker Logistics, Inc. (employer) appealed an unemployment insurance decision dated September 23, 2009, reference 01, which held that Roxanne Bisbee (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 November 3, 2009. The claimant participated in the hearing with Attorney Darwin Bunger. The employer participated through Nicki Brick, Human Resource Generalist and employer representative Steve Solovic. 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 battery changer on August 18, 2008. She sustained a work-related injury to her left long finger on March 12, 2009 and was released to return to her regular job on March 31, 2009. The claimant stopped working after May 7, 2009 due to pain in her left elbow and shoulder. She contends it was an injury resulting from the initial worker's compensation injury. The employer's worker's compensation insurance carrier notified the claimant on June 5, 2009 that the left elbow and shoulder pain was not a result of the finger injury.

The claimant contends she received information on an unknown date that the employer had discharged her as of May 7, 2009. She never bothered to call the employer to inquire about this information.

The last medical information the employer received was from June 22, 2009. Dr. Deborah George stated that the claimant needed to follow up with the orthopedic clinic and was not to use her left arm for work until cleared by the specialist. An appointment was made for the claimant for the next day but she could not attend that appointment for personal reasons and the appointment was cancelled. The next appointment was scheduled for July 15, 2009 and the claimant went to that appointment. The employer spoke with the claimant on June 22, 2009 advising her that she was not eligible for leave under the Family Medical Leave Act and her job was not protected. The employer advised the claimant she needed to keep the employer updated on her status through doctor's notes. The claimant does not remember the employer providing her with that information. The claimant requested the short-term disability form until she learned that she would have to certify that the medical injury was non-work-related and she no longer wanted that form.

The employer never heard from the claimant after June 22, 2009. The employer called the claimant on August 4, 2009 and left a voice mail message that an update was required. After receiving no response, the employer called the claimant again on August 7, 2009 but there was no answer and a message could not be left since there was no answering machine. The employer sent the claimant a certified letter on August 7, 2009 stating that it was crucial the claimant contacted the employer regarding her status. The employer stated that if she did not hear from the claimant within three working days from the receipt of the letter, it would be assumed that she voluntarily quit.

The certified letter was signed for on August 21, 2009 and on that same date, the claimant's attorney sent the employer a letter documenting that the claimant was being represented in this matter.

The claimant filed a claim for unemployment insurance benefits effective August 16, 2009 and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue 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 or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant contends she was discharged by the employer on May 7, 2009 but the employer contends the claimant is still considered an employee who is not working. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

According to the medical documentation provided, the claimant was excused from working until she went to the orthopedic clinic and was released by a specialist. The orthopedic appointment was scheduled for July 15, 2009 and the claimant went to that appointment. However, she

failed to return to work after that date and failed to provide the employer with an updated medical excuse. Consequently, the evidence in the record establishes that the claimant did, in fact, fail to return to the employment at the end of the leave of absence.

Unemployment insurance was "not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." White v. Employment Appeal Bd., 487 N.W.2d 342, 345 (Iowa 1992) (citing Butts v. Iowa Dep't of Job Serv., 328 N.W.2d 515, 517 (Iowa 1983)); quoted in Gilmore v. Employment Appeal Board, No. 4-670 / 03-2099 (Iowa App. 11/15/2004). The claimant has not presented competent evidence establishing that her medical condition was caused or aggravated by the incident on March 12, 2009. Accordingly, the separation is without good cause attributable to the employer and benefits must be 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 September 23, 2009, 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs