

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARLA M HOWARD**  
Claimant

**APPEAL NO: 11A-UI-03719-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 01/02/11**

**Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Cargill Meat Solutions Corporation (employer) appealed a representative's March 15, 2011 decision (reference 01) that concluded Carla M. Howard (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:00 a.m. on April 14, 2011. The parties both failed to respond to the hearing notice and provide a telephone number at which they could be reached for the hearing and did not participate in the hearing. The administrative law judge notes that communications mailed to the claimant, specifically including the hearing notice, were returned by the United States Postal Service as undeliverable.

The employer sent in a variety of exhibits both with its appeal and prior to the hearing, but did not participate in the hearing. Neither party participated or provided any information in the fact-finding interview which had been scheduled with a Claims representative for March 4, 2011, so no information was available from that source. While the administrative law judge suspects there is much more to the story than has been provided, and it is even possible that the employer affirmatively decided not to pursue its appeal, no notification has been provided by the employer that it wished to withdraw its appeal. Therefore, the administrative law judge must proceed with what information is available; under existing Agency rules, a party's failure to participate in the hearing scheduled on that party's own appeal does not automatically result in entry of a default decision. 871 IAC 26.8(5); 871 IAC 26.14(9).

Based on a review of the available information, which in essence is the written documentation sent in by the employer with its appeal and prior to the scheduled hearing, as well as the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**FINDINGS OF FACT:**

The claimant started working for the employer on July 22, 2008. She worked full time as a production worker. Her last day of actual work was September 19, 2010. After September 19 she called in absences reported as due to illness virtually daily through November 6, 2010. The

employer asserts that she did not call in thereafter, specifically including November 8, November 9 and November 10. The employer's policies provide that an employee who is a three-day no-call, no-show is considered to have voluntarily quit.

The claimant established a claim for unemployment insurance benefits effective January 2, 2011. The claimant has received unemployment insurance benefits from that date through February 19, 2011.

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

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

Iowa Code § 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 provides that, 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. However, an intent to quit can be inferred in certain circumstances. For example, a three-day no-call, no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). Based upon the available information, the claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. While it is clear that the employer did not participate in the fact-finding interview, it cannot be determined based upon the available information as to whether the benefits were received without any fraud or misrepresentation by the claimant. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's March 15, 2011 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 10, 2010, benefits are withheld until such time as the claimant has worked in and 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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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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