

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY J CULP
Claimant

APPEAL NO. 07A-UI-07743-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION ATLANTIC ENTERPRISES LLC
Employer

OC: 07/01/07 R: 02
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Spherion Atlantic Enterprises filed a timely appeal from the August 2, 2007, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on August 28, 2007. Claimant Kelly Culp participated and presented additional testimony through Jessica Conrad. Mike German, Branch Manager, represented the employer. The parties waived formal notice on the issue of whether the claimant has been overpaid unemployment insurance benefits. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, Two, Three and A into evidence.

ISSUES:

Whether the claimant voluntarily quit or was discharged. The administrative law judge concludes that the claimant voluntarily quit.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kelly Culp commenced her employment relationship with Spherion Atlantic Enterprises on April 3, 2006. Ms. Culp had two assignments with the temporary employment agency. Ms. Culp began her second and final assignment with Spherion on June 1, 2006. Ms. Culp was assigned to work as a full-time, third-shift production worker at General Mills in Cedar Rapids. The third-shift hours were 10:30 p.m. to 7:00 a.m. On September 1, 2006, Ms. Culp was promoted to a supervisory position, which paid \$9.50 per hour. Ms. Culp last appeared and performed work at General Mills on Saturday, October 21, 2006. Ms. Culp had appeared for work for each of her scheduled shifts on October 18, 19, 20 and 21. Ms. Culp was scheduled to work on October 22, 23, and 24, but did not appear for work or notify the employer she would be absent. Spherion's attendance policy required Ms. Culp to notify Spherion, or notify Branch Manager Mike German directly, at least one hour prior to the scheduled start of her shift if she needed to

be absent. Spherion also had a policy that deemed three consecutive “no-call, no-show” absences a voluntary quit. Ms. Culp had signed her acknowledgment of the policy on April 3, 2006. After Ms. Culp was a “no-call, no-show” for three shifts, Mr. German terminated the assignment as a voluntary quit on October 25, 2006.

A week later, Ms. Culp went to the Spherion office and spoke with Mr. German. Ms. Culp apologized for her “no-call, no-show” absences and asked if Spherion had work for her. Mr. German advised Ms. Culp that her supervisory position was no longer available. Ms. Culp asked whether Spherion had other work assignments available. Mr. German mentioned that he had an assignment in Iowa City that would pay \$8.00 per hour. Ms. Culp was not interested in the Iowa City assignment because of the commuting distance. However, Ms. Culp relocated to Iowa City shortly thereafter. During this conversation, Ms. Culp told Mr. German that she had been hospitalized overnight on October 15-16, 2006, due to an intentional overdose of prescription muscle relaxing medication. This was the first Mr. German had heard of the incident. Ms. Culp had returned to work at General Mills shortly after the overdose incident.

Ms. Culp did not work again until June 2007, when she worked at Dollar General for three weeks. Ms. Culp did not establish a claim for unemployment insurance benefits until July 1, 2007, after her separation from Dollar General. Ms. Culp has received benefits totaling \$2,870.00.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Ms. Culp voluntarily quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25. Where an employee is absent for three shifts without notifying the employer in violation of the employer’s policy, the employee is presumed to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4).

The greater weight of the evidence indicates that Ms. Culp voluntarily quit the employment with Spherion effective October 25, 2006, by failing to appear for three consecutive shifts without notifying the employer in violation of the employer’s policy. Ms. Culp and the employer provided very different versions of the separation from employment. The administrative law judge concludes the employer testimony is more credible. The employer’s testimony was based on business records the employer kept throughout the employment, including at the time of the October 2006 separation. The business records included specific dates of employment, specific absences, paycheck records and so on. Ms. Culp testified that she separated from the employment at a time of mental and personal instability. Ms. Culp referenced an intentional medication overdose. Ms. Culp provided an exhibit that documents an overnight hospitalization on October 15-16, 2006. The evidence regarding Ms. Culp’s mental instability calls into question the reliability of Ms. Culp’s recollection of the events surrounding the separation. The conclusion that Ms. Culp quit is further supported by her prolonged unemployment following the separation, which suggests low motivation to be employed.

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.

The greater weight of the evidence indicates that Ms. Culp voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Culp is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Ms. Culp.

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.

Because Ms. Culp has received benefits for which she has been deemed ineligible, those benefits constitute an overpayment that Ms. Culp must repay to Iowa Workforce Development. Ms. Culp is overpaid \$2,870.00.

DECISION:

The Agency representative's August 2, 2007, reference 03, decision is reversed. The claimant is disqualified for benefits until 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 employer's account shall not be charged. The claimant is overpaid \$2,870.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs