

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKLYN FORSYTH

Claimant

APPEAL NO: 10A-EUCU-01038-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALNUT BREWERY INC

Employer

OC: 06-28-09

Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 26, 2010, reference 06, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 15, 2010 and continued January 12, 2011. The claimant participated in the hearing. Dan Warren, Managing Partner; Julia Hunt, Assistant Manager; and Denise Norman, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time server for Walnut Brewery from November 29, 2009 to July 1, 2010. She was considered to have quit by abandoning her job. The claimant called Managing Partner Dan Warren June 28, 2010, 30 minutes before the start of her 5:00 p.m. shift. She stated she would not be in because her dog was locked in her mother's apartment and it was an emergency and she had to get in the apartment. She also said she had contacted her mom's management company and was told to call a locksmith so consequently she would not be in that day. Mr. Warren told the claimant that was not adequate notice and she was placing him in a difficult position and did not give him much option to cover her shift. He did not mention that she would receive any type of warning or that her job was in jeopardy because it was not at that time and she was still scheduled. The claimant was scheduled to work at 10:30 a.m. June 29, 2010, but when she had not arrived by 10:50 a.m. Mr. Warren left a voice mail for the claimant and asked that she return his call but she did not do so. She was scheduled to work at 4:00 p.m. June 30, 2010 and at 11:20 a.m. and again at 4:00 p.m. July 1, 2010, but was a no-call no-show for all of those shifts. The employer considered her to have abandoned her job by failing to call or show up for work for four consecutive shifts.

The claimant has claimed and received benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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(4) 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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Inasmuch as the claimant failed to report for work or notify the employer for four consecutive work days in violation of the employer's policy, she is considered to have voluntarily left her employment without good cause attributable to the employer. Therefore, 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 not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The October 26, 2010, reference 06, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such

time as 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 claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs