

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEGGY L WEBER
Claimant

APPEAL NO. 08A-UI-05864-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 05/25/08 R: 01
Claimant: Respondent (2)

Section 96.5-1-d – Voluntary Leaving - Illness or Injury
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated June 16, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on July 14, 2008. Although duly notified, the claimant failed to respond to the hearing notice and did not participate. The employer participated by Jolene Farley, and Karen Pederson.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant last worked for this employer on March 19, 2008. Ms. Weber was employed as a part-time cook. Her immediate supervisor was Karen Pederson. The claimant was injured and unable to work due to a non-work-related illness or injury and began a two-week approved general leave of absence on March 19, 2008. Although the employer held the claimant's job open for an extended period, Ms. Weber did not report back to claim her job, offer her services, or to present a release to return to work from her non-work-related illness or injury. After waiting an extended period and leaving messages for the claimant that went unreturned, the employer reasonably concluded the claimant had chosen to voluntarily leave her employment. Later, the claimant indicated to the employer that she had been seeking other employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant failed to return and offer her services to Good Samaritan Society upon being released to return to work from a non-work-related illness or injury.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant's failure to return to the employer to offer services after the medical recovery evinces an intention to quit her employment. Therefore, the separation was without good cause attributable to the employer. Benefits are denied.

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 the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$714.00.

DECISION:

The representative's decision dated June 16, 2008, reference 01, is hereby reversed. The claimant voluntarily quit employment for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$714.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw