

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE S MENDOZA
Claimant

APPEAL NO. 10A-UI-08785-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES**
Employer

OC: 05/02/10
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(17) – Lack of Day Care
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 9, 2010, reference 05, that held the claimant was not discharged for misconduct on May 19, 2010, and that allowed benefits. A telephone hearing was held on August 5, 2010. The claimant did not participate. Heidi Pringle, Senior Staffing Specialist, participated for the employer.

ISSUES:

Whether the claimant voluntarily quit without good cause attributable to the employer.

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The employer is a temporary employment firm. The claimant began work on assignment as a full-time assembler at Lyle Corporation on February 19, 2010 that was expected to last 90 days. The claimant received her training on the day shift, but she understood she could be placed on the evening or off shift when it was complete. The claimant was moved to the evening shift on March 29 and worked there until May 4.

The claimant notified the employer she lost her day care provider and needed to work a day shift. The employer had no opening for day shift. The employer considered the claimant to have quit her job due to a lack of child care.

The claimant failed to respond to the hearing notice. The claimant has received benefits on her claim.

REASONING AND CONCLUSIONS OF LAW:

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.

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 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:

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

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to her employer on May 4, 2010, due to a lack of child care.

The claimant was advised at the time of hire she would be trained on the day shift and moved to another shift when it was completed. The claimant was moved to the evening shift, where she worked for some five weeks, when she lost her child care provider. The claimant chose to discontinue employment when the employer had no day shift to offer her, which is considered a voluntary quit without good cause attributable to the employer.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an

overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant has been receiving benefits on her current unemployment claim, this issue is remanded to claims for an overpayment determination.

DECISION:

The department decision dated June 9, 2010, reference 05, is reversed. The claimant voluntarily quit without good cause due to a lack of child care on May 4, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw