

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CYNTHIA SCOTT
312 FOREST DR SE
CEDAR RAPIDS IA 52403**

**HEARTLAND EMPLOYMENT SERVICES
HCR MANOR CARE
c/o ADP UC EXPRESS
PO BOX 66744
ST LOUIS MO 63155-6744**

**Appeal Number: 05A-UI-08067-BT
OC: 07/03/05 R: 03
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

HCR Manor Care (employer) appealed an unemployment insurance decision dated July 29, 2005, reference 01, which held that Cynthia Scott (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2005. The claimant participated in the hearing. The employer participated through Ted Biderman, Human Resources Director and Barb Hamilton, Talx UC Express. Employer's Exhibits One through Three were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time registered nurse from February 19, 2004 through April 27, 2005. She requested and was approved for a personal leave for non-work-related medical reasons. She did not qualify for leave under the Family Medical Leave Act. Her leave of absence began on approximately February 23, 2005 and was scheduled to end on April 20, 2005. The claimant did not return to work prior to or at the end of her leave of absence. She never contacted her employer and no medical documentation was sent to the employer. The employer waited to hear from the claimant but when no contact was made, the human resources director sent a letter to her on April 27, 2005, since he was leaving on his own medical leave on April 28, 2005. The letter advised the claimant that since the employer had not heard from her, it could only conclude the claimant no longer wished to work for HCR Manor Care.

The claimant filed a claim for unemployment insurance benefits effective July 3, 2005 and has received benefits after the separation from employment in the amount of \$1,960.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated her intent to quit and acted to carry it out when she did call the employer or return to work at the end of her personal leave. Although the claimant states that her physician was going to send the employer medical documentation excusing her from work until July 1, 2005, the excuse was not even prepared until May 1, 2005, after the date of her separation. However, it was the claimant's responsibility to ensure the employer received the proper paperwork and/or that the employer knew what her situation was at that time. The claimant took no action on her own behalf and her conduct can only be interpreted as an intent to quit.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied that burden. 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.

DECISION:

The unemployment insurance decision dated July 28, 2005, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,960.00.

sdb/pjs