

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHEL M DOYLE**  
Claimant

**COUNTRY MAID INC**  
Employer

**APPEAL NO: 11A-UI-14958-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/10/11**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(4) – Job Abandonment  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated November 16, 2011, reference 03, that held the claimant was not discharged for misconduct on September 26, 2011, and benefits are allowed. A telephone hearing was held on December 13, 2011. The claimant did not participate. Michelle Hoag, HR Manager, participated for the employer. Employer Exhibit One was received as evidence.

**ISSUES:**

Whether claimant voluntarily quit with good cause attributable to the employer.

Whether claimant is overpaid unemployment 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 claimant worked for the employer as a part-time production worker from October 6, 2010 to August 19, 2011. She filed an unemployment claim effective July 10, 2011 after a three-day disciplinary suspension that began on July 14. She returned to work on August 1. The employer protested claimant's claim as still employed. The department issued a decision dated August 23, 2011 that claimant did not meet the availability requirements of the law, and benefits are denied effective July 17. The claimant did not appeal.

The claimant last performed some work on Friday, August 19. Due to claimant missing work due to illness on and after that date, the employer requested a meeting for August 29 to have claimant provide medical documentation that excused her absences. The meeting was postponed, but eventually claimant agreed to September 1. Claimant was a no-call, no-show to the meeting and failed to call-in or report for work for three days thru September 6.

The employer sent claimant an employment termination letter on October 7 stating she had abandoned her job for failing to report or call-in for work for three consecutive days that is a voluntary quit pursuant to its policy.

Claimant could not be contacted at the phone number she provided for the hearing due to disconnected service. She has received unemployment benefits on the additional claim she filed effective October 23, 2011.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to her employer due to job abandonment effective October 7, 2011.

The claimant agreed to meet with the employer about her employment status on September 1 due to her excessive absenteeism and failing to report to work. Her failure to report for the meeting and contact the employer, thereafter, is a voluntary quit due to job abandonment.

Iowa Code § 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 claimant has now been disqualified from receiving benefits by this decision, the overpayment issue is remanded to claims for a decision.

**DECISION:**

The department decision dated November 16, 2011, reference 03, is reversed. The claimant voluntarily quit without good cause due to job abandonment on October 7, 2011. 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 the claimant is otherwise eligible. The overpayment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs