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

STACY K BLOCHLINGER
Claimant

APPEAL NO. 08A-UI-03613-SWT

ADMINISTRATIVE LAW JUDGE
AMENDED DECISION

STREAM INTERNATIONAL INC
Employer

OC: 03/16/08   R: 01
Claimant: Respondent (2)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 4, 2008, reference 01, that concluded the claimant was forced to resign. A telephone hearing was held on April 29, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, April Mesenbrink. Jacqueline Kurtz participated in the hearing on behalf of the employer with a witness, Monica Blume Ensminger.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from April 9, 2007, to December 21, 2007. The claimant was informed that under the employer's rules, employees were allowed up to a maximum of 45 calendar days of personal leave. The claimant's residence was approximately 40 miles from the employer's business location. She was required to provide her own transportation to and from work.

In late December 2007, the claimant's vehicle was damaged in an accident during an ice storm. The claimant requested and was granted a personal leave of absence. On January 7, 2008, the claimant spoke to Monica Ensminger, the human resource representative. She told Ensminger that she planned to return to work on January 10. The claimant, however, found out later that the car could not be repaired and she would have to buy another car. She called Ensminger on January 9 and informed her that she could not return to work on January 10 because there was no way to get her car fixed and she would need to wait until she got her tax refund to buy another vehicle. She told Ensminger that she would call when she was able to return to work. Ensminger informed the claimant that her leave would be up on February 7.

The claimant bought another car and called Ensminger on February 6, 2008. She told Ensminger that she needed a couple of more days off to arrange for a babysitter and would try to be back at work on Monday, February 11. Ensminger told her that she would talk to her manager to see what could be arranged. Ensminger and her manager decided that 45 days was the maximum time off allowed, and if the claimant did not return on February 7, her employment would end. Ensminger called the claimant later on February 6 and informed her that if she did not return to work on February 7, her employment would end.

The claimant did not return to work on February 7, after her leave had expired. She did not return because she did not have a babysitter lined up for her children for before and after school. Her children are 14, 11, and 9-years old.

The claimant filed for and received a total of $1,552.00 in unemployment insurance benefits for the weeks between March 16 and May 10, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

The unemployment insurance rules provide that a leave of absence negotiated between an employer and employee is considered a period of voluntarily unemployment during which the employee is ineligible for unemployment insurance benefits. The rules further provide that a leave of absence can be extended if both parties agree, but if an employee fails to return to work at the end of a leave of absence, she is considered to have voluntarily quit and is ineligible for benefits. 871 IAC 24.22(2)j.

Based on this rule, the claimant voluntarily quit employment when she did not return to work on February 7, 2008. I believe she was aware that she had to return to work on February 7 as evidence by the fact that she called on February 6 to ask for an extension. The fact that the claimant had not arranged childcare for her children after being off work for 45 days would not establish good cause for leaving employment. Under the rules, a claimant is considered to have voluntarily quit employment without good cause attributable to the employer if she leaves due to lack of childcare. 871 IAC 24.25(17). This is the same type of case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid $1,552.00 in unemployment insurance benefits for the weeks between March 16 and May 10, 2008.

DECISION:

The unemployment insurance decision dated April 4, 2008, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid $1,552.00 in unemployment insurance benefits, which must be repaid.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs/kjw