

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TOSHEBA L SMITH**  
Claimant

**PILOT TRAVEL CENTERS LLC**  
Employer

**APPEAL 15A-UI-13151-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/01/15**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 24, 2015, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 15, 2015. Claimant participated. Employer participated through general manager, Paul Pasutti. Employer's Exhibit 1 was received.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a deli clerk/cashier from December 31, 2014, and was separated from employment on June 20, 2015, when she voluntarily quit.

Claimant was absent from her scheduled days of work on June 16, 17, 18, and 20, 2015, and she did not call employer to report her absences.

The employer's policy provides that no-call/no-show absences for three consecutive workdays is considered a voluntarily quitting of employment. The policy is included in the employee handbook. Claimant received a copy of the employee handbook.

Claimant has not received any payments of unemployment benefits since her separation from employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25(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.

Claimant asserts she requested the days in question off, and employer added her to the schedule at the last minute knowing she was already out-of-state and could not work. Claimant asserts she was then terminated for missing work. I do not find claimant's testimony credible. Originally, claimant stated she requested one day off and happened to get the next two days off. Later during the hearing, claimant claimed she requested three days off. Claimant changed the date on which she was terminated three times during the hearing. Claimant gave two different reasons why she could not go into work on her last scheduled day—first, because she did not have childcare and later because she was out-of-state caring for her sister. Employer's testimony was consistent. Additionally, it would be illogical for employer to schedule claimant to work with the knowledge that claimant was out-of-state and it would have to turn around and try to find her replacement. Thus, I find employer's version of events credible.

Claimant missed four consecutive days of work without notifying employer she would be absent. An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for over three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer.

Claimant has received no payments of unemployment benefits since her separation with this employer. Thus, the issues regarding overpayment are moot and will not be discussed.

**DECISION:**

The November 24, 2015, (reference 02) decision is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

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Decision Dated and Mailed

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