

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY BABCOCK

Claimant

APPEAL NO: 08A-UI-01555-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**OC: 01-06-08 R: 03
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 30, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 3, 2008. The claimant participated in the hearing. Lori Elliott, Assistant Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Cargill Meat Solutions from July 11, 2006 to November 30, 2007. She called in sick November 13, 20, 21 and 22, 2007, but was a no-call no-show November 24 through November 30, 2007, and the employer considered her to have self-terminated by failing to call or show up for work for three consecutive days in violation of the attendance policy. The claimant testified she was ill and called in November 24 through November 30, 2007, but the employer's computer records did not reflect any calls. She indicated that on one of those days the recording did not appear to work so her husband went to the plant to notify the employer she was ill and was told her employment was terminated. She did not contact the human resources department to try to resolve the matter.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her 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.

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 claimant called in November 13, 20, 21 and 22, 2007, and her calls were recorded by the employer's attendance computer but there were no calls recorded between November 24 and November 30, 2007. There is no evidence that the employer's attendance computer was not working during that time and it is difficult to believe that it would fail to record only the claimant's calls for seven days when there were no previous problems. Consequently, inasmuch as the claimant failed to report for work or notify the employer for three consecutive work days in violation of the employer's policy, she is considered to have voluntarily left her employment without good cause attributable to the employer. 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 January 30, 2008, reference 01, decision is reversed. The claimant voluntarily left her 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. The claimant is overpaid benefits in the amount of \$2,784.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs