

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER BROOKS

Claimant

APPEAL NO: 09A-UI-07635-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION

Employer

OC: 04/05/09

Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Qwest Corporation (employer) appealed an unemployment insurance decision dated May 15, 2009, reference 01, which held that Amber Brooks (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 June 11, 2009. The claimant participated in the hearing. The employer participated through Debra Thompson, Telesales Manager and employer representative Steven Zacs. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

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 hired as a full-time center sales and service associate on August 11, 2008 and she worked through her last day on January 7, 2009. She was a no-call/no-show on January 8, 2009. The claimant called in the next day to report that her child was ill. However, she was a no-call/no-show on January 12, 13, 14, and 15. Manager Debra Thompson happened to see the claimant in the work facility stairwell on January 15, 2009 and the claimant said that she was having personal issues. Ms. Thompson told her she needed to at least call to report her absences but also gave her contact information in case her personal issue was medical.

The claimant was a no-call/no-show on January 16 and 19, 2009. The employer went out of its way to help the claimant return to work. Certified letters were sent to her on January 13, two on January 16, and on January 20, 2009. When the claimant failed to call or return to work, she was considered to have voluntarily quit effective January 20, 2009.

The claimant filed a claim for unemployment insurance benefits effective April 5, 2009 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. she is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to call or report to work for six consecutive work days. She contends she thought she had been fired by Tracey Dare, Resource Specialist but no one told her she had been fired. Where an individual mistakenly believes that she is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984).

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. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated May 15, 2009, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs