

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**Appeal Number: 04A-UI-06198-DWT
OC 05/09/04 R 02
Claimant: Respondent (2)**

**CRYSTAL M DIEHM
4926 MADISON AVE
DES MOINES IA 50310**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**THE IOWA CLINIC PC
1215 PLEASANT STE 618
DES MOINES IA 50309-1416**

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The Iowa Clinic PC (employer) appealed a representative's May 27, 2004 decision (reference 01) that concluded Crystal M. Diehm (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 30, 2004. The claimant participated in the hearing. Marian Klein, the employment coordinator, and Jane Talcott, the office manager, appeared on the employer's behalf. 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.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for reasons that qualify her to receive unemployment insurance benefits?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on December 31, 2002. The claimant worked full-time as a billing coder. Talcott was her supervisor. The end of every month is very busy because the employer sends out bills.

On April 28, the claimant had to leave work early because her son was ill. The claimant took him to the hospital. On April 29, the claimant called Talcott at 7:00 a.m. to let her know she was unable to work at 8:00 a.m. because her son was still not doing very well and she had to take him to the doctor. Talcott asked the claimant if she could find someone else to take her son to the doctor because the claimant was needed at work. The claimant is a single parent and indicated she would try to find someone else to take him to the doctor but she doubted she would be able to find anyone. Talcott told the claimant she needed to get her priorities in order and decide if she wanted to remain employed. The claimant understood that if she chose to take care of her son and stay home with him, the employer would discharge her.

The claimant took her son to the doctor and was done around 12:30 p.m. She did not contact the employer after the doctor's appointment or return to work. The claimant did not report to work or contact the employer after April 29, 2004. The employer's policy informs employees that if they fail to report to work and do not contact the employer for two days, the employer considers the employee to have voluntarily resigned. When the claimant did not call or report to work on April 30 and May 3, the employer sent the claimant a letter informing her she was no longer employed because the employer considered her to have voluntarily quit her employment. The claimant's job was not in jeopardy prior to May 3, 2004.

The claimant established a claim for unemployment insurance benefits during the week of May 9, 2004. She filed claims for the weeks ending May 15 through June 19, 2004. She received her maximum weekly benefit amount of \$322.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The evidence establishes the claimant assumed she no longer had a job as of April 29, 2004 because the employer asked her to get her priorities in order. The claimant decided her family came before her job and did not return to work after April 29, 2004. The claimant's failure to return to work or contact the employer again on April 29, 30 and May 3 establishes that she intended to quit. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2. The claimant's failure to attempt to continue her employment after she received the employer's May 3 letter further supports the conclusion she had no intention of returning to work.

The claimant incorrectly assumed Talcott discharged her on April 29. Talcott did not discharge her. Instead, Talcott told the claimant she had to get her priorities in order because the employer needed her at work. At most Talcott reprimanded the claimant for not reporting to work when she knew the employer needed her. Even though the claimant stayed at home for legitimate reasons, her son was ill and needed her, the claimant failed to take the appropriate steps to continue her employment. The claimant's failure to contact the employer and provide a medical excuse for her April 29 absence does not establish that she quit her employment for reasons that qualify her to receive unemployment insurance benefits. The claimant's decision to make her family her priority is a compelling reason to quit, but does not qualify her to receive benefits. As of May 9, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending May 15 through June 19, 2004. She has been overpaid a total of \$1,932.00 in benefits she received for these weeks.

DECISION:

The representative's May 27, 2004 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of May 9, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits during the weeks ending May 15 through June 19, 2004. The claimant has been overpaid \$1,932.00 in benefits she received for these weeks.

dlw/kjf