

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AFTON E KIRK**  
Claimant

**APPEAL NO. 15A-UI-07471-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MADISON COUNTY MEDICAL EQUIP INC**  
Employer

**OC: 06/07/15**  
**Claimant: Respondent (2)**

Iowa Code Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 19, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on May 28, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on August 10, 2015. Claimant Afton Kirk participated. Deb Brookhart represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits Three, A and B into evidence.

**ISSUE:**

Whether the claimant separated from the employment for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Afton Kirk was employed by Madison County Medical Equipment, Inc., d/b/a Jackson Medical Supply, as a full-time branch manager from 2013 and last performed work for the employer on May 7, 2015. Ms. Kirk's immediate supervisor was Deb Brookhart, Director of Operations. On May 8, 2015, Ms. Kirk gave the employer written notice that she was quitting the employment effective May 22, 2015. Though Ms. Kirk told the employer she was quitting to become a stay-at-home mother, Ms. Kirk had actually accepted a position with a competitor of the employer, but did not want to disclose that to the employer. After Ms. Kirk submitted her written resignation, she commenced an approved vacation. Ms. Kirk was scheduled to return to work on Monday, May 18, 2015. Ms. Kirk was scheduled to begin the new employment on May 26, 2015. While Ms. Kirk was on vacation, the competitor who had offered employment to Ms. Kirk contacted Jackson Medical Supply as part of a background check and Ms. Brookhart learned of Ms. Kirk's plan to go to work for a competitor. On May 8, 2015, Ms. Brookhart had learned from another staff member that Ms. Kirk had shred some files and relocated files from one filing cabinet to another. Based on the knowledge that Ms. Kirk planned to go to work for a competitor and the knowledge that Ms. Kirk had shred files, the employer decided to end the employment prior to the expiration of the notice period provided by Ms. Kirk. When Ms. Kirk returned to work on

Monday, May 18, 2015, Ms. Brookhart notified Ms. Kirk that the employment was done. The prospective new employer subsequently rescinded its offer of employment and Ms. Kirk did not go to work for the new employer.

Ms. Kirk established a claim for benefits that was effective June 7, 2015 and has received \$4,032.00 in benefits for the period of June 7, 2015 through August 8, 2015.

On June 18, 2015, a Workforce Development claims deputy held a fact-finding interview to address Ms. Kirk's separation from Jackson Medical Supply. Ms. Brookhart represented the employer at that proceeding.

#### **REASONING AND CONCLUSIONS OF LAW:**

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:
  - a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.] The administrative law judge must follow the plain language of the statute.

Iowa Admin. Code r. 871-24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The evidence indicates that Ms. Kirk voluntarily quit the employment. Her voluntary quit was effective Friday, May 22, 2015, the day she had provided to the employer as the last day of her employment. Because Ms. Kirk voluntarily quit without good cause attributable to the employer for the sole purpose of accepting new employment, but did not perform work for the new employer, the quit disqualified Ms. Kirk for unemployment insurance benefits. Because Ms. Kirk did not establish her claim for unemployment insurance benefits until June 7, 2015, the employer's decision to end the employment four or five days early has no impact on the unemployment insurance eligibility or liability issues. Effective May 22, 2015, Ms. Kirk is disqualified for benefits until 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 unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$4,032.00 in benefits for the period of June 7, 2015 through August 8, 2015. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

**DECISION:**

The June 19, 2015, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. Effective May 22, 2015, the claimant is disqualified for benefits until 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 was overpaid \$4,032.00 in benefits for the period of June 7, 2015 through August 8, 2015. The claimant is required to repay the overpayment. The employer's account is relieved of liability for benefits, including liability for benefits already paid.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs