

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROXANNE MILLER**  
Claimant

**APPEAL NO. 09A-UI-18419-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CSOI CORP**  
Employer

**OC: 09/13/09**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The employer, CSOI, filed an appeal from a decision dated December 1, 2009, reference 03. The decision allowed benefits to the claimant, Roxanne Miller. After due notice was issued a hearing was held by telephone conference call on January 20, 2010. The claimant participated on her own behalf and with witnesses Barrett Diggs and Pat Jessip. The employer participated by Supervisor Chad Smith.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Roxanne Miller was employed by CSOI from March 9, 2007 until October 30, 2009, as a part-time clerk. In late September 2009 the gas tank alarm started going off randomly throughout the day. This alarm is connected to a probe in the large underground gas storage tank and the alarm is designed to go off when the gas tank is empty. The alarm could be turned off from inside the store by the staff and this was done whenever it would go off.

The employer immediately contacted a company to come and repair the alarm but as it was not an emergency, a technician did not come to the store until two weeks after the initial report. Work was done to fix the problem but it continued and the technician made several more service calls. As the tank is underground, and so is the probe, it took some time to diagnose and fix the source of the problem.

Ms. Miller complained to the store manager and Supervisor Chad Smith. Mr. Smith told her the matter was being taken care of. Her last day of work was Friday, October 30, 2009. She was scheduled to work October 31 and November 1, 2009, plus some days the next week but was no-call/no-show to work. She had decided to quit and elected not to notify the employer because she wanted them to have to work in the store with the alarm going off to find out how annoying it was. Mr. Smith had already worked in the store during this time. No other employees of the store had quit because of the alarm.

In addition, the judge notes that being no-call/no-show to work for more than three days is in and of itself considered a voluntary quit without good cause attributable to the employer under the provisions of 871 IAC 24.25(4).

Roxanne Miller has received unemployment benefits since filing an additional claim with an effective date of November 8, 2009.

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

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.

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973). The administrative law judge understands how annoying the alarm must have been to Ms. Miller, but the employer was making a diligent effort to have the problems fixed. CSOI was at the mercy of the company it had engaged to fix the alarm and its backlog of service calls. As no other employees quit because of this alarm problem, it must be concluded the claimant was overly sensitive. Under the ruling of the above court case, she did not quit with good cause attributable to the employer and is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits,

as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of December 1, 2009, reference 03, is reversed. Roxanne Miller is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs