

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIANNA TALBOT**  
Claimant

**APPEAL NO. 10A-UI-07709-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOC SERVICES LLC**  
Employer

**Original Claim: 04/11/10  
Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Isle of Capri Services, LLC (employer) appealed an unemployment insurance decision dated May 20, 2010, reference 02, which held that Brianna Talbot (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 July 14, 2010. The claimant participated in the hearing. The employer participated through Tammy Kadlec, Human Resources Manager, and Jamie Briesch, Employee Relations Supervisor. 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 having considered all of the evidence in the record, finds that: The claimant was interviewed for the position of guest room attendant on April 2, 2010 and she assured the employer she would not have any problem adhering to the employer's appearance standard. At the time of the interview, the employer did not observe any facial piercings on the claimant. She was hired and started orientation on April 12, 2010 and one of the first issues reviewed by Employee Relations Supervisor Jamie Briesch was the appearance standards. Ms. Briesch noticed the claimant was wearing a nose ring and during a break she reminded the claimant the nose ring had to be removed in compliance with the appearance standard.

The claimant said okay but returned to class still wearing the nose ring. At lunch, Ms. Briesch approached the claimant and again requested she take out the nose ring. The claimant refused and said she would not take it out for religious purposes. Ms. Briesch took the claimant to go meet with Tammy Kadlec, Human Resources Manager. Ms. Kadlec asked the claimant what religion she was in order to ascertain whether an accommodation needed to be provided. The

claimant then said it was not due to religious beliefs but it was a family tradition. Ms. Kadlec explained that the claimant would need to comply with company policy if she wanted to work there and the claimant indicated she was not willing to take out the nose ring. She subsequently gathered her belongings and left the property.

The claimant filed a claim for unemployment insurance benefits effective April 11, 2010 and has received benefits after the separation from employment.

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

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant contends she was fired, but the facts show she voluntarily quit after refusing to comply with the employer's appearance standards. 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 pm April 12, 2010, when she refused to remove her nose ring, which was in violation of the employer's appearance standards.

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. Quitting because she refused to remove her nose ring does not establish good cause attributable to the employer. The claimant has not satisfied her 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 20, 2010, reference 02, 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw