

**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**

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AMENDED

**Appeal Number: 06A-UI-07192-S2T
OC: 06/04/06 R: 03
Claimant: Respondent (2)**

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.

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 is 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 – Overpayment

STATEMENT OF THE CASE:

Ames Sewing & Vacuum Center (employer) appealed a representative's July 7, 2006 decision (reference 01) that concluded Karen Clevenger (claimant) voluntarily quit due to a change in the contract for hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 3, 2006. The claimant participated personally. The employer was represented by Michael Holzworth, Attorney at Law, and participated by Steve Wedeking, President. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

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 by this employer in March 2005, as a full-time sales manager. She held this same position with a previous owner since March 1996.

The employer and the claimant discussed how her location was not profitable. The employer had cut all extras out of the budget. The only remaining place to cut was the claimant's income. The two had a meeting on May 30, 2006. As of June 1, 2006, the employer would change the claimant's income from \$3,000.00 per month to \$10.00 per hour for 50 hours of work per week plus three percent commission on sales. The claimant would earn approximately \$2,150.00 per month on wages. Sales figures showed that commissions would have run \$200.00 per month at a minimum. If the claimant put in more effort she could have earned more than \$3,000.00 per month and the location would be profitable.

The claimant did not want to change her manner of remuneration but continued to work for the employer after the change on June 1, 2006. She worked on June 1, 2 and 3, 2006. On June 3, 2006, the claimant told the employer via e-mail that she was not sure she would be at work on June 5, 2006 because her father was ill. The claimant said she would keep the employer informed. The employer found out later on June 5, 2006 that the work location never opened because the claimant did not appear for work.

On June 6, 2006, the employer drove from central Iowa to the Iowa City location so the store would open. On the way the employer spoke to the claimant by telephone. The claimant told the employer she would be late in arriving. When the two arrived at the Iowa City location the claimant discussed how she could not work as many hours as before because she wanted to take care of her new boyfriend's eight-year-old child. In fact, she had to leave early that day to take the child to the dentist. The claimant talked about how happy she was in the new relationship. The employer allowed the claimant to leave early.

Later that evening the employer received an e-mail from the claimant stating she was quitting because it was in her best interests. The employer thought the claimant was quitting due to the new relationship. The claimant told Iowa Workforce Development she quit because of the change in her contract for hire. The claimant was unable to determine what, if any, difference her income might be based on the new figures.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize

the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer that she was leaving and quit work. An employee must give prior notice to the employer before quitting due to a change in the contract of hire. In order to show good cause for leaving employment based on a change in the contract for hire, an employee is required to take the reasonable step of informing the employer about the change that the employee believes are substantial and that she intends to quit employment unless the conditions are corrected. The employer must be allowed a chance to correct those conditions before the employee takes the drastic step of quitting employment. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant did not inform the employer of the substantial change at issue nor that she intended to quit if the changes were not addressed. In fact, she continued to work and, by doing so, acquiesced to the change. Due to the claimant's failure to give the employer notice, there cannot be a finding that she left work with good cause attributable to the employer and, therefore, the claimant is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received benefits in the amount of \$2,592.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's July 7, 2006 decision (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 claimant is overpaid benefits in the amount of \$2,592.00.

bas/cs/pjs