

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH DEAN
Claimant

APPEAL NO: 11A-UI-04118-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELLE/SIOUX CITY RIVERBOAT
Employer

OC: 02/27/11
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Belle/Sioux City Riverboat (employer) appealed an unemployment insurance decision dated March 28, 2011, reference 03, which held that Deborah Dean (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 May 3, 2011. The claimant participated in the hearing. The employer participated through Barb Holsinger, Director of Human Resources; Karen Johnson, Human Resources Employment Manager; and Pat Brentlinger, Security Manager. 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 considered all of the evidence in the record, finds that: The claimant was employed as a full-time valet transporter from September 29, 2009 through February 26, 2011 when she voluntarily quit. She had requested February 26, 2011 off work and the request was denied but she contends that was not the reason she quit. The claimant voluntarily quit mostly because she was not being paid for her breaks when she had to work through them. The employer would sometimes get so busy that the claimant would not be able to take her breaks. She subsequently learned she was not getting paid for these breaks so went to the security manager and he told her this had to be taken care of by her supervisor. This happened during her entire length of employment. The claimant could not provide any dates when she was not paid for breaks she worked.

The employer testified that employees are paid for lunch after six hours of work. The claimant worked the grave yard shift and was often sent home early so did not qualify for paid breaks.

During the last pay period, she was sent home four or five days. The employer said the claimant was paid for her break every time her supervisor turned in her time.

The claimant also testified that she had problems with her foot and was told by a physician that she may need to walk with a cane. She said that it was hard to walk as far as she had to walk to punch in but could not afford to see a specialist to get a work restriction. Additionally, the claimant did not like to ride with the driver who drove employees from their parking lot to work since she felt his driving was unsafe.

The claimant filed a claim for unemployment insurance benefits effective February 27, 2011 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

Iowa Code § 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.

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. She has not satisfied that 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 March 28, 2011, reference 03, 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css