

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE M SMITH
Claimant

APPEAL NO. 17A-UI-06214-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARBOR FREIGHT TOOLS USA INC
Employer

OC: 05/21/17
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Diane Smith (employer) appealed a representative's June 8, 2017, decision (reference 01) that concluded Diane Smith (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 5, 2017. The claimant participated personally. The employer participated by Seth Daniels. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 on June 16, 2016, as a part-time logistics associate. The claimant did not receive the employer's handbook. The claimant worked about one day per week. The employer posted schedules at the worksite but the claimant usually called the employer to ask if she worked. The claimant was unable to obtain the information by calling the employer before her weekend shifts on April 15, 22, and 29, 2017. The last times she spoke to someone at the worksite was on April 11, 2017, and April 17, 2017. She did not travel to the jobsite to look at the schedule. The employer separated her from employment after failing to appear for work three times.

The claimant filed for unemployment insurance benefits with an effective date of May 21, 2017. She has not received any benefits after her separation from employment. The employer provided the name and number of the person who would participate in the fact-finding interview on June 7, 2017. The fact finder called the person but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not submit the specific rule or policy that the claimant violated which caused the separation. An employee with firsthand information could not be contacted for rebuttal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

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 the claimant's actions. The claimant stopped appearing for work and using due diligence to find out when she was supposed to appear for work. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's June 8, 2017, decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs