

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELVIA M RAMIREZ-LOPEZ

Claimant

APPEAL NO. 07A-UI-07983-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DELTA SPORTS PRODUCTS

Employer

**OC: 07/29/07 R: 03
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Delta Sports Products (employer) appealed a representative's August 17, 2007 decision (reference 01) that concluded Elvia Ramirez-Lopez (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 held on September 5, 2007. The claimant participated personally through Ike Rocha, Interpreter. The employer participated by Dana Grovo, Plant Manager, and Heather Cline, Controller. Estela Gomez observed part of the hearing.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

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 March 13, 2006, as a full-time paper folder. On July 13, 2007, the claimant was boxing items with Ms. Gomez. She and Ms. Gomez made an error and the items had to be recounted. The claimant wanted a co-worker to help with the lifting of the boxes off of the pallet. The supervisor tried to explain to the claimant that the co-worker was being paid an incentive for his performance. The co-worker could not be pulled away from his job without reducing his wages. The claimant became upset and started crying. She thought the supervisor was discriminating against the two women because they are Hispanic. The supervisor asked the claimant and Ms. Gomez to sit down. The supervisor found an interpreter to explain the situation to the two women. Ms. Gomez sat down but the claimant would not. She started looking for the owner. After being unable to locate the owner, the claimant quit work. She refused to listen to the supervisor's explanation of the situation or the interpreter. Continued work was available had the claimant not resigned.

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 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.

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. 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.

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 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's August 17, 2007 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 \$1,092.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs