

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**LORI BAKKEN**

Claimant

**NORDIC EXPRESS INC**

Employer

**APPEAL NO. 14A-UI-05246-B**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/20/14**

**Claimant: Respondent (2)**

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Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Nordic Express, Inc. (employer) appealed an unemployment insurance decision dated May 15, 2014, (reference 01), which held that Lori Bakken (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known address of record, a hearing was held in Decorah, Iowa on June 23, 2014. The claimant participated in the hearing with Attorney Benjamin Hamel. The employer participated through owner Dwayne Lundtvedt, clerk Jan Quandahl, and Attorney Erik Fern. Employer's Exhibits One through Six were admitted into evidence.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant most recently worked as a part-time clerk from November 13, 2006, through April 16, 2014, when she voluntarily quit. She gave a verbal notice to quit on April 6, 2014, and was going to work through April 18, 2014. At the end of her shift on April 16, 2014, the employer found the claimant copying the shift change sales sheets. The employer told her she did not have authorization to copy those financial records.

Later that day, the claimant provided the employer with a medical excuse taking her off work from April 16, 2014, through April 18, 2014. Her written resignation, dated April 17, 2014, requests the employer pay her 50.5 hours of vacation even though she did not finish out her two weeks. Her resignation letter stated she quit because, "Our differences have become too extreme" and "On Wednesday April 16, I talked with my doctor and he advised me not to continue working at this time." The claimant never provided the employer with any medical documentation confirming she was advised to quit her employment.

The claimant testified she quit her employment because of intolerable working conditions, which had been going on for a year or years. She said the employer always yelled at her and was "in her face" telling her she was a thief. There were some issues with cash variances but the employer attributed the problems to clerical errors. The claimant also accused special-needs employee Joe Needles of sexually harassing her. Joe was a dishwasher in the restaurant next door to the convenience store. He came in early to eat breakfast and sometimes sat in the office where he could see the cashier. The claimant accused him of touching her and making inappropriate comments to her. The only complaint the employer heard was that the claimant did not like him staring at her so the employer told Joe to go on the restaurant side when he came in early. The claimant said her co-workers were aware of it but the only co-worker who testified in the hearing said she just heard the claimant complaining that Joe stunk and she did not want him in the office because of that. Both the employer and the co-worker said they were unaware of any allegations of sexual harassment until they heard them in the fact-finding interview.

The claimant filed a claim for unemployment insurance benefits effective April 20, 2014, and has received benefits after the separation from employment in the amount of \$1,323.00. Owner Dwayne Lundtvedt and clerk Jan Quandahl participated in the fact-finding interview on behalf of the employer.

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

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant quit on April 16, 2014, due to what she described as hostile work conditions and harassment at the work place. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code § 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

The evidence provided by the claimant does not rise to an intolerable or detrimental work environment. She was not found to be a particularly credible witness and the record lacked supporting documentation supporting her claims. If she was truly experiencing sexual harassment to the extent she claims, it would not be something she would not have tolerated for weeks, let alone months, and she would have documented dates and times. The claimant's testimony was often not supported by the written documentation that was provided and she did not seem to grasp there was a problem with stealing copies of financial records to prove she was not stealing money. "Good cause" for leaving employment must be that which is

reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973).

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. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$1,323.00 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. The employer's account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

**DECISION:**

The unemployment insurance decision dated May 15, 2014, (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 \$1,323.00 and she is responsible for paying the overpayment.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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