

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA L DAVIS

Claimant

APPEAL NO. 07A-UI-11192-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOME DEPOT USA INC

Employer

**OC: 11/04/07 R: 01
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Home Depot USA (employer) appealed a representative's November 29, 2007 decision (reference 01) that concluded Lisa Davis (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 December 18, 2007. The claimant participated personally. The employer participated by Angela Rodenburg, Human Resources Manager; Lindsey Duncan, Store Manager; and Carol Wisecarver, Regional Human Resources Manager.

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 October 2, 2003, and at the end of her employment she was working as a full-time key carrying department supervisor. The claimant worked varying hours on a two-week rotation. At the end of her employment her hours varied even more because she was working to become an assistant manager. The claimant disliked not having as set schedule because she could not plan activities with her twelve-year-old daughter.

On October 23, 2007, the claimant complained to the employer that her hours on October 29, 2007, had been changed. The claimant worked all the hours the employer posted but began to have a personality conflict with the store manager. The claimant thought she was "clicky" and sometimes the manager would not speak to the claimant.

The claimant did not appear for her scheduled shift on November 2, 1007. Later she appeared at work and said she was quitting for her daughter. 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.

871 IAC 24.25(18) and (22) provide:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(18) The claimant left because of a dislike of the shift worked.

(22) The claimant left because of a personality conflict with the supervisor.

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. When an employee quits work because she has a personality conflict with the supervisor or dislikes the shift she is working, her leaving is without good cause attributable to the employer. The claimant left work because she had a personality conflict with the supervisor and she disliked the shifts she was working. Her leaving was without 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 the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's November 29, 2007 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. The claimant is overpaid benefits in the amount of \$1,440.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css