

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

AMANDA J WIENEKE  
316 EDWARDS ST  
WATERLOO IA 50703

BARDAL INVESTMENTS LLC  
JIVA SALONSPA  
2719 COUNTRY MEADOW LN  
CEDAR FALLS IA 50613

JIVA SALON & SPA  
223 MAIN ST  
CEDAR FALLS IA 50613

Appeal Number: 05A-UI-08758-DWT  
OC: 07/10/05 R: 03  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Bardal Investments LLC (employer) appealed a representative's August 18, 2005 decision (reference 01) that concluded Amanda J. Wieneke (claimant) was qualified to receive unemployment insurance benefits, and employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 12, 2005. Since there was no indication the claimant had called the Appeals Section prior to the hearing to provide the phone number at which she could be contacted for the hearing, the claimant was not contacted to participate in the hearing. Jamie Bruhn, a co-worker, and Stephanie Bardal, the owner, appeared on the employer's behalf.

The claimant contacted the Appeals Section at noon for the 8:00 a.m. hearing. The claimant made a request to reopen the hearing. Based on the claimant's request to reopen the hearing,

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.

ISSUES:

Is there good cause to reopen the hearing?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on November 18, 2004. The claimant worked as a full-time hair stylist.

On June 18, 2005, the claimant noticed the employer had scheduled an appointment for her on a day she had received authorization to take off for a vacation. The claimant was upset when she told Bardal about the appointment. Bardal indicated this was not a problem and the claimant needed to bring this to T.G.'s, her manager, attention. Bardal then had to answer a phone call.

The claimant then approached T.G. about the fact she had approved the time off but the employer forgot to block her name off on the appointment book. T.G. and the claimant engaged in a heated verbal confrontation. After the claimant and T.G. ended their argument, T.G. told Bardal that the claimant had just quit. When the claimant was picking up her personal belongings, she told Bardal she had quit. The claimant did not return to work after June 18, 2005.

The claimant established a claim for unemployment insurance benefits during the week of July 10, 2005. The claimant filed claims for the weeks ending July 16 through 30, 2005. The claimant received her maximum weekly benefit of \$337.00 for each of these weeks.

The claimant contacted the Appeals Section at noon on September 12 for the 8:00 a.m. scheduled hearing. The claimant requested that the hearing be reopened. The claimant asserted she had contacted the Appeals Section prior to the hearing and provided the phone number at which she could be contacted. The claimant could not provide a control number, because she had discarded it. The claimant admitted she had forgotten about the 8:00 a.m. hearing, but the phone number she provided was her cell phone and she was available for the hearing, if she had been called to participate in the hearing.

The Appeals Section personnel reviewed the logs kept on in-coming calls. There was no record that the claimant contacted the Appeals Section to provide her phone number prior to the September 12, 8:00 a.m. hearing.

#### REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

Although the claimant asserted she had followed the hearing directions by contacting the Appeals Section, her assertion is not supported by the facts. Specifically, the claimant did not have a control number and there is no record of the claimant calling the Appeals Section prior to noon on September 12, 2005. The record indicates the claimant failed to follow the hearing instructions and forgot about the 8:00 a.m. hearing until noon. As a result of the above facts, the claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The evidence indicates the claimant voluntarily quit her employment on June 18, 2005. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quits without good cause she quits because of a personality conflict with a supervisor, 871 IAC 24.25(22) or after being reprimanded, 871 IAC 24.25(28). The evidence does not establish why the claimant quit after her verbal confrontation with T.G. The evidence, however, suggests the claimant became very upset while she engaged in a heated argument with T.G. and quit while she was upset. The claimant may have compelling personal reasons for quitting, but the facts do not establish that she quit for reasons that qualify her to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending July 16 through 30, 2005. The claimant has been overpaid a total of \$1,011.00 in benefits for these weeks.

#### DECISION:

The claimant's request to reopen the hearing is denied. The representative's August 18, 2005 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of July 10, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending July 16 through 30, 2005. She has been overpaid and must repay a total of \$1,011.00 in benefits she received for these weeks.

dlw/kjw