

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH L LEANDER-BURGHARDT
Claimant

APPEAL NO. 11A-UI-14861-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK SHOP INC
Employer

**OC: 10/16/11
Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 7, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 9, 2012. Claimant Sarah Leander-Burghardt provided an invalid telephone number for the hearing, 402-706-4890, and could not be reached at that number for the hearing. Darlene Foote represented the employer and presented additional testimony through Ricky Cardwell. Exhibits One, Three, and Four were received into evidence.

The hearing record closed at 8:25 a.m. and the administrative law judge dismissed the employer at that time. At 8:49 a.m., the claimant telephoned the Appeals Section. The claimant had changed telephone numbers after she provided a number for the hearing, but did not provide the new number to the Appeals Section as required by the hearing notice and 871 IAC 24.14(7)(c). The claimant did not provide good cause to reopen the record.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sarah Leander-Burghardt was employed at the Kwik Shop on Avenue G in Council Bluffs as a full-time associate/clerk from January 2011 until October 4, 2011, when she voluntarily quit. Darlene Foote, Store Manager, directed Ms. Leander-Burghardt's work day-to-day. Ms. Leander-Burghardt last appeared for work on October 2, 2011. On October 3, Ms. Burghardt notified Ms. Foote that she would be late. Ms. Leander-Burghardt was in the habit of being late for work. On October 3, Ms. Foote told Ms. Leander-Burghardt that this needed to be the last time she was late. Ms. Leander-Burghardt never appeared for the October 3 shift and did not make further contact with the employer about her need to be gone from that shift.

Ms. Leander-Burghardt was next scheduled to work on October 4, but did not appear. When Ms. Leander-Burghardt did not appear for her shift, Ricky Cardwell, Assistant Manager

telephoned Ms. Leander-Burghardt and spoke with her. Ms. Leander-Burghardt told Mr. Cardwell that she was “not coming to work if Darlene is going to be a bitch.” Ms. Leander-Burghardt told Mr. Cardwell that she did not like “the way the situation was handled” and was not sure she wanted to go to work. Mr. Cardwell was unsure of the situation Ms. Leander-Burghardt was referring to, but later learned that she was referring to the October 3 absence and her conversation with Ms. Foote on October 3. Mr. Cardwell told Ms. Leander-Burghardt that Ms. Foote was not at the store that day. Mr. Cardwell told Ms. Leander-Burghardt that if she did not come to work, the employer would take that as her resignation. Ms. Leander-Burghardt told Mr. Cardwell, “I know, I quit.” She then hung up.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Ms. Leander-Burghardt failed to appear for the hearing and thereby failed to present any evidence to support the notion that her voluntary quit was for good cause attributable to the employer. The weight of the evidence in the record establishes that Ms. Leander-Burghardt voluntarily quit due to an interpersonal disagreement with her day-to-day supervisor and due to a mild verbal reprimand Ms. Foote had issued the previous days. Quits based on personality conflicts with supervisors or in response to reprimands are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(22) and (28).

Ms. Leander-Burghardt voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Leander-Burghardt is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Leander-Burghardt.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's November 7, 2011, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs