

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORA L MANNING

Claimant

APPEAL NO: 12A-UI-07158-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA

Employer

OC: 05/13/12

Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

APAC Customer Services of Iowa (employer) appealed a representative's June 5, 2012 decision (reference 01) that concluded Lora L. Manning (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 10, 2012. The claimant participated in the hearing. Turkessa Newsome appeared on the employer's behalf and presented testimony from two other witnesses, Jackie Atkins and Justin Block. Based on 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.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on November 7, 2011. She worked full time as a customer service representative at the employer's Davenport, Iowa call center. Her last day of work was May 16, 2012.

The claimant and a coworker had been roommates until a falling out; the claimant moved out on May 3. On May 4 she went to Atkins, team manager, and complained that the coworker was continuing to bother her by sending her notes and video or text messages, and following her around at break time. Atkins indicated she would speak with the coworker and did so, even changing the break times of the coworker so they would not coincide with the claimant's breaks. The last note or message from the coworker to the claimant was on May 7.

The claimant was not satisfied, as the coworker was still occasionally in the vicinity of the claimant's work area. On Friday, May 11 she asked Atkins if she could transfer to another program which was in a different area of the call center. Atkins denied the claimant's request because the claimant had some attendance issues and because the claimant acknowledged that the notes had stopped; however, she offered to reconsider the transfer request in 30 days if the claimant's attendance improved.

On Tuesday, May 16, the claimant left work abruptly and early at 2:00 p.m.; her scheduled end time was 5:30 p.m. She had seen the coworker in her vicinity and became upset, and decided that she could no longer continue to work there. She did not report for work as scheduled on May 17, but the employer called her and asked her to return and try to work things out. The claimant agreed that she would return on May 18, but she then was a no-call, no-show for work, and she did not return to work thereafter.

The claimant established a claim for unemployment insurance benefits effective May 13, 2012. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a coworker is not good cause. 871 IAC 24.25(21), (6). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). Rather, her complaints do not surpass the ordinary tribulations of the workplace. The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining

the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's June 5, 2012 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of May 6, 2012, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css