

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN HARPER**  
Claimant

**APPEAL NO: 09A-UI-18771-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK SHOP INC**  
Employer

**OC: 10/25/09**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Kwik Shop, Inc. (employer) appealed an unemployment insurance decision dated December 7, 2009, reference 01, which held that Susan Harper (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2010. The claimant participated in the hearing. The employer participated through Tari Glaspie, District Advisor. 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:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

**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 employed as a full-time assistant manager from February 18, 2005 through October 17, 2009. On her last day of employment, she handed the clerk her keys and stated, "I quit, I'm done." The claimant left and later left the store manager a voice mail message stating that she was quitting due to family problems. Her job was not in jeopardy, the employer had no reason to discharge her, and continuing work was available had she not quit.

The claimant filed a claim for unemployment insurance benefits effective October 25, 2009 and has received benefits after the separation from employment.

**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 contends she was fired over the telephone on October 20, 2009 by Tari Glaspie but the evidence does not support her contention. First the employer had no reason to discharge the claimant and the claimant admitted this. Secondly, the employer's procedures when discharging employees are to handle it in person with a third party witness present. The employer never discharges an employee over the telephone and the claimant admitted she had been present when the district advisor discharged an employee following these standard procedures. Thirdly, the district advisor testified the claimant left the store manager a voice mail message stating that she was quitting due to family problems. The claimant admitted she did leave a message for the store manager and does not remember what she said but stated she could have said she was having family problems. And finally, the claimant gave her keys to the clerk on October 17, 2009 before she left. The employer already had the keys when it completed the claimant's separation paperwork on October 19, 2009. The separation paperwork cannot be completed if an employee still has keys to the store.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit by handing her keys to the clerk on October 17, 2009 before she left and saying, "I quit, I'm done." She carried out that intent by leaving her manager a voice mail message stating she was quitting due to family problems. The claimant's separation was for personal reasons and not attributable to the employer.

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 and benefits are denied.

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 could 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 unemployment insurance decision dated December 7, 2009, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/pjs