

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARI K BROWN
Claimant

APPEAL NO. 08A-UI-01557-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERY BROTHERS INC
Employer

**OC: 01/13/08 R: 04
Claimant: Respondent (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Deery Brothers (employer) appealed a representative's February 5, 2008 decision (reference 01) that concluded Kari Brown (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 March 14, 2008. The claimant participated personally. The employer was represented by Thomas Kuiper, Hearings Representative, and participated by Gerald Zick, Controller, and Carol Franklin, Human Resources Supervisor. The employer offered and Exhibit One was received into evidence.

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 having considered all of the evidence in the record, finds that: The claimant was hired on August 31, 2006, as a full-time evening receptionist. The claimant requested Family Medical Leave (FMLA) for her pregnancy and postnatal care of her child. The employer sent the claimant a note on November 29, 2007, congratulating the claimant and granting her FMLA to be used from December 10, 2007, through January 20, 2008. The claimant's last day of work was December 8, 2007. The claimant's payday was December 14, 2007. The claimant's child was born on December 15, 2007, and the claimant stopped by the workplace on December 17, 2007, with her new baby. The employer and the claimant were not thinking about the paycheck.

On December 19, 2007, the claimant's baby was rushed to the hospital in Iowa City, Iowa. She telephoned the Human Resources Supervisor and asked her to mail the check to the claimant's address because she needed the money. The Human Resources Supervisor said she would. After the call, the Human Resources Supervisor remembered the claimant had moved and she did not know the claimant's new address. The Human Resources Supervisor did not consider that the claimant received her mail at a post office box. The Human Resources Supervisor took the claimant's paycheck for approximately \$106.00 and gave it to the Controller.

When the claimant did not receive her paycheck in the mail, she called the Controller at the end of December 2007 and the beginning of January 2008, asking that her check be mailed to her. Instead of mailing the check, the Controller attempted to call the claimant on her cellular telephone. That telephone was disconnected because the claimant could not pay for service without the check from the employer. On January 14, 2008, the claimant left a message for the employer stating she was quitting work because she had not been paid her wages when they were due.

Shortly after that call the employer mailed the claimant her paycheck to the address the employer had on file. The claimant received the check on January 18, 2008. On January 22, 2008, the employer mailed another certified letter to that same address telling the claimant that she did not appear for work on January 21, 2008. The employer would consider the claimant to have quit if she did not contact the employer within ten days. The claimant did not contact the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit with 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.

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. In the absence of agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving the employment. Deshler Broom Factory v. Kinney, 140 Nebraska 889, 2 N.W.2d 332 (1942).

When an employee quits work because the employer did not pay wages when they were due without an agreement to the contrary, her leaving is with good cause attributable to the employer. The claimant left work because she was not paid her wages when they were due and there was no agreement to the contrary. Her leaving was with good cause attributable to the employer. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973).

DECISION:

The representative's February 5, 2008 decision (reference 01) is affirmed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw