

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA THOMAS
Claimant

APPEAL NO. 10A-UI-09241-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

OC: 05/09/10
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated June 16, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on August 13, 2010. Although duly notified, the claimant did not participate. The employer participated by Ms. Melanie Goodson, Store Human Resource Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has received an overpayment of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: Jessica Thomas was employed by Lowe's Home Centers from October 4, 2006 until April 16, 2010 when she discontinued reporting for scheduled work. Ms. Thomas worked as a full-time associate and was paid by the hour.

Ms. Thomas returned from an approved leave of absence on April 14, 2010 and worked two more days and then discontinued reporting for scheduled work. Work continued to be available to the claimant at the time that she chose to leave her employment. Although the stores human resource manager went to Ms. Thomas' residences and left a note requesting information as to why she was not reporting for work, the employer received no further contact from the claimant. After the claimant had failed to report for scheduled work for three or more consecutive workdays, the employer reasonably concluded the claimant had voluntarily left employment without good cause attributable to the employer.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

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.

The evidence in the record establishes that work continued to be available to Ms. Thomas but that she chose to leave employment for reasons unknown to the employer.

An individual who voluntarily leaves her employment must first give notice to the employer an opportunity to address the reasons or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Inasmuch as the claimant did not give the employer an opportunity to resolve any complaints she may have had prior to leaving employment the separation was without good cause attributable to the employer.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The evidence in the record establishes that the claimant did not report for scheduled work for three or more consecutive workdays and did not provide notification to the employer. The employer's reasonableness and conclusion that the claimant had chosen to voluntarily leave employment. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable

employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated June 16, 2010, reference 01, is reversed. The claimant left employment without good cause attributable to the employer. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, providing that she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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