

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKI BELL
Claimant

APPEAL NO. 10A-UI-09342-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PEELS INC
Employer

OC: 05-16-10
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 22, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 17, 2010. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Marie Mushey, Franchisee/Operator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time shift manager for Wendy's from July 8, 2009 to May 16, 2010. She gave the employer her two-week notice May 2, 2010, effective May 16, 2010. The general manager asked the claimant why she was leaving, because she was a valued employee, and she initially stated an employee was giving her problems and she no longer wished to work with him anymore, and then said she did not think management was for her, and finally said her boyfriend did not want her to drive to Walcott every day because she was pregnant. After the claimant said she did not like working with that one employee, the general manager stopped scheduling them together; and when she said she did not know if she was interested in management, the general manager asked her if she wanted to go back to being a crew member and stated he would try to get permission for her to keep the same rate of pay. After the general manager tried to address her concerns, she told him her boyfriend did not want her to drive to Walcott while pregnant. The employer had continuing work available for her.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant provided three reasons for her leaving, the employer addressed her first two concerns regarding working with the one employee and being unsure about being a part of the management team. The final, and apparently real, reason given by the claimant was that her boyfriend did not want her driving to Walcott while pregnant. Although the claimant may have had a good personal reason for quitting her employment, her leaving was not for good cause attributable to the employer as defined by Iowa law. Therefore, 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 section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The June 22, 2010, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as 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 claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw