

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BERNADETTE J ZELLMER**  
Claimant

**APPEAL NO. 07A-UI-09538-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS DAIRY INC**  
Employer

**OC: 08/19/07 R: 01**  
**Claimant: Respondent (2)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Wells Dairy filed a timely appeal from the October 2, 2007, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on November 1, 2007. Claimant Bernadette Zellmer participated. Jennifer Coe of TALX UC eXpress represented the employer and presented testimony through Wendy Lee, Organization Capability Generalist, and Production Supervisor Rob Frank. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

**ISSUE:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Bernadette Zellmer was employed by Wells Dairy as a full-time temporary production worker from June 11, 2007 until August 17, 2007, when she voluntarily quit to return to school. At the time Ms. Zellmer applied and was hired for the employment, the employer had not provided her with an effective end date for the employment, but had advised her that the employment was seasonal. Two or more weeks before her effective quit date, Ms. Zellmer notified Production Supervisor Rob Frank that she would be quitting the employment to return to school. Though Ms. Zellmer had been hired as seasonal help, the employer had not announced a layoff and continued to have work available for Ms. Zellmer. The employer did not begin to layoff its seasonal workers until September 30, 2007.

Ms. Zellmer established a claim for benefits that was effective August 19, 2007 and received benefits totaling \$2,310.00.

**REASONING AND CONCLUSIONS OF LAW:**

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 requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

A claimant is presumed to have voluntarily quit the employment without good cause attributable to the employer if the claimant left the employment to go to school or left in anticipation of a future layoff, though work was still available at the time the claimant left the employment. See 871 IAC 24.25(26) and (29).

Where a claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed, the claimant is deemed to have left the employment for good cause attributable to the employer. See 871 IAC 24.26(22).

The evidence in the record indicates that Ms. Zellmer was hired as a seasonal employee, but was not hired for a specific period of time. The evidence indicates that Ms. Zellmer left the employment to return to school, left before the employer announced any layoffs of the seasonal employees, left more than a month before the employer effected any layoff of seasonal employees, and that the employer continued to have work available for Ms. Zellmer well beyond her quit date. The evidence indicates that Ms. Zellmer voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Zellmer is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Ms. Zellmer.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because Ms. Zellmer received benefits for which she has been deemed ineligible, those benefits constitute an overpayment that Ms. Zellmer must repay to Iowa Workforce Development. Ms. Zellmer is overpaid \$2,310.00.

**DECISION:**

The Agency representative's October 2, 2007, reference 03, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged. The claimant is overpaid \$2,310.00.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw