

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWNA L JOHNSON
Claimant

APPEAL NO. 08A-UI-07635-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALGREEN COMPANY
Employer

OC: 07/20/08 R: 02
Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Walgreen Company (employer) appealed a representative's August 13, 2008 decision (reference 01) that concluded Shawna L. Johnson (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 8, 2008. The claimant participated in the hearing. Raul Ybanz of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Mark Hougan and George Shaffer. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 10, 2007. She worked part time (approximately 28 hours per week) as a photo specialist in the employer's Marshalltown, Iowa store. Her last day of work was July 17, 2008.

On that date the claimant was scheduled to work a shift from 4:30 p.m. to 10:30 p.m. Shortly after arriving for her shift, she was summoned to meet with Mr. Hougan, the store manager, and Mr. Shaffer, a loss prevention supervisor. They wished to discuss some concerns with her, primary a complaint that had been made about six days prior regarding the claimant engaging in inappropriate conduct with an assistant manager. The claimant admitted that there had been some kissing while in the sales area. The employer's representative's requested that the claimant write up a statement as to the events; however, the claimant was not comfortable doing so, and inquired as to what would happen to either herself or the assistant manager if she did or did not provide the written statement. The employer's representatives responded that they could not answer that question, that the investigation was still on-going. The claimant

indicated that she did not want to get the assistant manager in trouble and would rather quit than do something that would get him into trouble. After a brief further discussion in which the employer's representative's further indicated they could not say what would happen next, the claimant stated that she preferred to quit, and left the discussion, followed out by Mr. Shaffer, as he wanted to ensure she did not make a "scene." The claimant clocked out and left the store at approximately 5:00 p.m.

The claimant established a claim for unemployment insurance benefits effective July 20, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$775.00.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not "voluntary" as she had not desired to end the employment; she argues that it was the employer's action or inaction in not answering the question as to what would happen to her or the assistant manager if she did or did not provide the written statement, and the employer's following the claimant out of the discussion to ensure there was no "scene" which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as leaving rather than performing the assigned work or leaving when work was available and the employee has not been affirmatively told she was discharged. 871 IAC 24.25.

The claimant indicated she would rather quit rather than do something that might get the assistant manager in trouble, and further indicated at the end of the discussion on July 17 that she was just going to quit; she left the premises without being told that she was discharged. Therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2.

Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (22). Quitting because a reprimand or other disciplinary action has been or might be given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v.

Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's August 13, 2008 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of July 17, 2008, benefits are withheld until such time as the claimant has worked in and 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css