

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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ALDI INC – W BURLINGTON  
c/o TALX UCM SERVICES  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-08490-H2T  
OC: 07-24-05 R: 02  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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 August 15, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 1, 2005. The claimant did participate. The employer did participate through Ben Lawrence, District Manager. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cashier full time beginning December 4, 2004 through January 17, 2005 when she voluntarily quit. The claimant had been tardy to work by over one hour the previous Saturday, January 15, and Mr. Lawrence stopped her on January 17 prior to her shift

beginning to talk about her attendance. The claimant had not been given any formal disciplinary action about her attendance although she had been counseled about being late. During the meeting she was told that if she continued to be late to work she would be disciplined in the future. Mr. Lawrence asked the claimant if she liked the job because she had been late to work several times and to him that signaled an employee who was unhappy on the job. During the meeting the claimant admits that Mr. Lawrence never told her she was discharged or fired. The claimant asked about providing a two-week notice to Mr. Lawrence and he told her that it would not be necessary to do so. The claimant quit her job because she believed that Mr. Lawrence was unhappy with her job performance. Continued work was available for her had she not quit.

The claimant has received unemployment insurance benefits after the separation.

#### 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.

871 IAC 24.25(33) 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:

- (33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

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 (amended 1998). It was reasonable for the claimant's employer to inquire of her about why she had been late for work over one hour. The claimant's testimony was that she was never told she was discharged, yet she believed that Mr. Lawrence was unhappy with her job performance. The claimant's argument that she was discharged for being tardy is not supported by her own testimony that she had no previous discipline for being tardy even though she had on several occasions been late to work. An inquiry into why an employee is late is not discipline nor is it unreasonable. The employer clearly had a policy of being lenient on attendance issues. The administrative law judge is persuaded the claimant quit because she felt the employer wanted her to, although the

employer did not request she quit. Quitting because you believe your employer is unhappy with your job performance is not good cause attributable to the employer. Benefits are denied.

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 the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The August 15, 2005, 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 is overpaid benefits in the amount of \$708.00.

tkh/tjc