

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINA M CHURCH
Claimant

APPEAL NO: 11A-UI-08431-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ALL IN A DAY LLC
AVENTURE STAFFING & PROFESSIONAL
SERVICES LLC**
Employer

**OC: 10/24/10
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(27) – Job Refusal
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 16, 2011, reference 04, that held the claimant was laid-off for lack of work on April 6, 2011, and benefits are allowed. A telephone hearing was held on July 13, 2011. The claimant did not participate. Cyde Hall, Office Manager, participated for the employer. Employer Exhibits 1 and 2 was received as evidence.

ISSUES:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

The issue is whether claimant is overpaid unemployment benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began work on January 24, 2011 on a temp-to-hire assignment at TTI, and last worked for the employer as a full-time production employee on April 6, 2011. The claimant experienced an allergic reaction to chemical resins at the workplace and she was treated by a doctor for this illness. The employer moved her to jobs in the warehouse and clerical/office work during her healing period.

Claimant was released from doctor's care without restriction on April 5. On April 6, the employer requested claimant move to a different production work area that was free from the chemicals that cause her allergic reaction and she refused. The employer considered her job refusal as a voluntary quitting of employment.

Claimant failed to respond to the hearing notice. She has received unemployment benefits on her recent claim filed April 3, 2011.

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.

871 IAC 24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

The administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer on April 6, 2011.

The employer accommodated claimant by providing work away from the chemicals that caused her an allergic reaction during her healing period. When claimant was released from doctor's care without restriction, the employer further accommodated claimant by requesting she continue her production work in a different area free from the chemicals. Claimant's job refusal is without good cause attributable to the employer.

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.

Since claimant has received unemployment benefits on her claim filed April 3, 2011, the overpayment issue is remanded to Claims for a decision.

DECISION:

The department decision dated June 16, 2011, reference 04, is reversed. The claimant voluntarily quit without good cause attributable to the employer on April 6, 2011. Benefits are denied until the claimant has worked in and is paid wages for insured work, equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css