

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIN K MOYLAN**

Claimant

**APPEAL NO: 13A-UI-12941-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**P & L INVESTMENTS INC**

Employer

**OC: 10/20/13**

**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

871 IAC 24.25(21) – Dissatisfaction of the Work Environment

Section 96.3-7 – Recovery of Overpayment

871 IAC 24.10 – Fact Finding Participation

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated November 12, 2013, reference 01, that held she voluntarily quit employment with good cause on October 21, 2013, and benefits are allowed. A telephone hearing was held on December 11, 2013. The claimant participated. Iris Kraitek, Representative, and, Pam Geertz, Store Manager, participated for the employer.

**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.

The issue is whether employer participated at department fact finding.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on June 22, 2012, and last worked for the employer as a part-time cashier on October 21, 2013. The employer has a no smoking policy at work. Claimant was caught smoking at work on October 21 and she was verbally warned about it. The employer had warned claimant about this issue on two prior occasions.

Claimant was a no-call no-show to work on October 22. She came into work on October 23, laid down her uniform, said she quit and left. Prior to leaving, claimant did not complain to the employer about any discrimination and/or co-worker bullying.

Claimant failed to respond to the hearing notice. The department C2T control system has no record of any call in to UI Appeals with a request to participate.

Claimant received benefits totaling \$370 on her claim: week ending October 26 - \$145; November 2 - \$159; and, November 9 - \$66. The employer did not participate in department fact finding based on the record sheet and testimony in this matter. There is no evidence claimant committed any act of fraud or misrepresentation in order to receive benefits.

#### **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 October 23, 2013 due to job dissatisfaction.

The employer testimony is claimant quit in response to being verbally warned about violating the no smoking policy. This is not a 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.

The administrative law judge further concludes claimant is overpaid benefits \$370, but she is not required to repay it due to the employer failure to participate in department fact finding. There is no evidence claimant committed any act of fraud or misrepresentation to receive the benefits, and there is no evidence the employer participated in fact finding.

**DECISION:**

The department decision dated November 12, 2013, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to the employer on October 21, 2013. 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. Claimant is not required to repay the \$370 overpayment.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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