

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA M JENSEN
Claimant

APPEAL NO: 06A-UI-09011-S2T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**WEST DES MOINES COMMUNITY SCHOOL
DISTRICT**
Employer

**OC: 07/30/06 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

West Des Moines Community School District (employer) appealed a representative's September 5, 2006 decision (reference 02) that concluded Debra Jensen (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 25, 2006. The claimant participated personally. The employer participated by Richard Beechum, Transportation Supervisor, and Brenda Moorehead, Safety, Training and Human Resources Supervisor.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer and is not eligible to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 29, 2005 as a full-time school bus driver. The claimant signed for receipt of the employer's Call In Procedures on November 29, 2005. The Procedures state that an employee must notify the employer one hour prior to the start of the shift of any absence. The employer's contract with employees indicates that if an employee fails to notify the employer of absences on three working days, the employee will be considered to have voluntarily quit.

The claimant called the employer at approximately 2:30 a.m. on April 12, 2006. She told the employer she would not be at work due to an abusive boyfriend. She asked for a leave of absence but was denied. The employer told the claimant to stay in touch. The claimant promised she would. The claimant did not appear for work or notify the employer of her absence on April 13, 14 and 17, 2006.

On April 18, 2006, the claimant informed the employer she was ready to return to work. The employer separated the claimant from employment for failure to appear for work or notify the employer of her absence for three days.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds that the claimant voluntarily quit work without good cause attributable to the employer and is not eligible to receive unemployment insurance benefits.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. The claimant stopped appearing for work and did not report her absence for three days. When an employee does not appear for work or notify the employer of her absence for three days and the employer has a policy regarding such absences, her leaving is without good cause attributable to the employer. The claimant failed to appear for work or notify the employer of the absences for three days and the employer had a policy about this type of absence. The claimant's leaving was without good cause attributable to the employer. The claimant voluntarily quit without 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.

The claimant has received benefits in the amount of \$2,219.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

he representative's September 5, 2006 decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has 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 \$2,219.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs/pjs